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[This is a very rough draft, with some original handwritten line edits, of a speech that was hastily typed on a laptop computer prior to delivery. I do not have a final, clean version of this speech.]

YALE LAW SCHOOL PREISKEL\SILVERMAN SPEECH
NOVEMBER 12, 1993

Doing What's Right: Ethical Questions for Private Practitioners Who Have Done or Will Do Public Service.

I was delighted to be invited to speak to you today. I have very fond memories of my time at Yale and returning is a pleasure, particularly when I am given an opportunity to discuss a topic for which I have a passion: public service, and which, I am gratified to see, the Law School has grown to appreciate. My years here were the transition years away from the social and political upheavals of the Vietman and the post Kennedy civil rights years. As a result, although at that time there was a core group of students involved in public service projects with Legal Aid and capital punishment cases, the clinical programs were very limited and the core group very small. I myself was more involved in purely academic pursuits with law journals than in public service concerns. As I have interviewed law clerks this past year, however, I have been delighted with the expansion in the variety of clinical programs at the law school -- the Mental Disability, Immigration, Greenhaven, Prisoner Rights, Homeless Advocacy, and Housing programs (I'm sure I've missed some and apologize) and I have also been impressed with the leadership role Yale has taken in work like the Haitian Refugee project.

Certainly, Yale's faculty has always and does provide intellectual challenges for its students. For some of us, the abstract study of law itself is fascinating. Nevertheless, it is exciting to combine intellectual engagement with social good and I

appreciate that the culture at the Law School must be much more stimulating on social issues than it was when I was here. It is always nice to see change for the better.

In very recent years the law school's leadership role in supplying our nation with public servants has been particularly noticeable. Yale has always done so. In my time, we had people like Cyrus Vance as Secretary of State. Now, however, the Law School has filled some very visible public positions like the Presidency of the United States, back-to-back, and the Supreme Court with its alumni. I am sure the publicity has not harmed Dean Calabresi's fund raising efforts or diminished the attractiveness of the law school to potential applicants. It is this very type of symbiotic relationship between public service and private benefit that aroused my interest in the topic I have chosen today.

The presence of our alumni in public positions underscores the fact that individuals with strong intellectual and income producing capabilities are often drawn to public work and service. Clearly, there is a drive and need in many such people to "do good" for others and it is a drive that motivates people to forego money -- for the ill-paying scale of public work is legendary -- and to endure the often disheartening frustrations occasioned by the limited resources generally available to government legal agencies and public interest law firms to do their work.

Recognizing the onerous burdens that choosing public service imposes, I hesitated in raising my topic -- Doing What's

Right: Ethical Questions for Private Practitioners Who Have Done or Will Do Public Service." My topic suggests that I am advocating an additional burdens to an already disadvantaged option and attempting to undermine one of its very few but very potent attractions -- the creation of contacts and knowledge which can later assist in private practice. I certainly do not want to discourage public work. Nevertheless, newspaper accounts are almost daily reporting on incidents that not only call into question the ethicacy of how private industry uses former public employees to lobby public entities but how public service lawyers exploit their former public positions or anticipated future positions to earn money in their private practice.

The Secretary of Commence Ron Brown's actions have starkly illustrated my point. Mr. Brown before leaving his very prestigious Washington law firm to join the Clinton administration, wrote to his clients to bid them adeau, In the process he reminded them of his new appointment and of the competence of his partners to serve their needs, He also invited them to stay in touch with him and visit him. Mr Brown has also chosen not to recused himself as Secretary from involvment in issues that effect companies who retain his former law firm. As an aside, I might mention that Mr. Brown's son has been hired by a lobbying firm with a clientele similar to that for which Mr. Brown had worked. Mr. Brown's actions in protecting his income-producing potential after he leaves the government has been very direct and well publicized. I do not address here any potentially illegal actions like the recent

Justice Department's investigation of Mr. Brown about an allegation that he has accepted payment in return for attempting to influence US policy on Vietman. That type of conduct is clearly controlled by legal standards. My focus ius not what is already within the law, although I will allude to it in order to mark our starting point, but my question is where should we place the ethical line at which self-promotion for future benefit should be placed.

We should be careful in judging Ron Brown because he may simply be unapologetic about a reality that is an integral part of public service. In fact when questioned about his lobbying during his confirmation hearings, he off handedly retorted that it only proved he was an effective advocate. The major elect of New York City, Rudy Guiliani, a former US Attorney was hired by three laws firms after his initially failed run for major four years ago. The three law firms paid him and an assistant about half a million dollars a year to join them. At none of the firms did he generate that much in client billing and this may account for his leaving two of those firms. However, it was an interesting investment for the law firms that are not lobbyist in the Washington sense and also unquestionably a very generous perk of public service for Mr. Rudy Guiliani when he had to make a living in the private sector. Similar to the major-elects story, when Robert Abram attorney general of NYs decided to leave public service after more than two decades, he was hired by one of the premiere law firms of NYC to develop business with the former Soviet Union countries. Now, Bob Abrams for the last eight years has run a state office and prepared a failed campaign for the Senate. I'm impressed that he had the time to develop skills and contacts with the former eastern bloc.

These are very direct examples of how public service is exploited in private practice. Some of you may want to argue that

these examples are titilating but that they should not drive the discussion of ethical rules because this level of benefit from former public service is limited to just a few, elite public officers. To the extent that common ~~folks~~ people can exploit their former positions, well, there generally are laws which control those situations. For example, President Clinton has passed an executive order that his executive aides must commit to not lobbying before government agencies which they supervised for five years. SImilarly, most government agencies in most cities and states bars, for lawyers from working before the agency that had employed them. ~~for at least two year.~~ at least two years However, these rules simply address the more blatent forms of exploitation of public service. They do not address the more subtle forms.

For those of you who may not realize it, government agencies like Legal Aid societies, United States Attorneys Offices and District Attorneys offices often forge personal relationships that exist for lifetimes and those relationships influence appointments to other government jobs as well as the swapping of business in private practice. This is contact building at its best and most subtle because it doesn't implicate lobbying but it does implicate involve private gain.

I draw on a personal example to illustrate my point and to underscore that this subtle exploitation of past public service is ~~not a question without significant~~ as quite importance to both the individaul involved ~~but~~ and to our society, ~~in general. The consequences are important~~. As you know, I started my legal career with Robert

Morgenthau office, Manhattan's District Attorney's ~~office.~~ When I left there I went into private practice. I did not practice criminal law at my firm so I did not have the opportunity there to exploit the knowledge of criminal law and the criminal justice system that I had acquired. Nevertheless, my prior association with Mr. Morgenhau did assist in my appointment while in private practice to serve on a number of public committees -- the NYC Campaign Board, the New York State Mortgage Agency Committee, the Governor's task force of race and cultural relations, and on PRDLEF, The work for the DA"s office in combination with the presitge of my partnership in a firm that specialized in international busiess law made me an attractive candidate for public service on borads and ~~directors~~ of these types of organizations. I took personal pride that I never attempted to draw on my work for these ~~projects~~ organizations to generate work for my firm. I never accepted appointment to a committee involved in any of my firm's specialities and I did not have my partners try to develop new business in the public service areas in which I was involved. Needless to say, some of my partners felt that my decisions as ~~were~~ a bit counter~~intuitive~~ productive for them and somewhat burdensome. ~~for the firm.~~ My contributions of time to public service was obviously at the expense of my firm. Despite a standard that most lawyers do not adhere to, I am not pristine and do not intend for you to conclude so. When Senator Moynihan's committee reviewed my qualifications for the federal bench, they spoke to all of the people I served with on these various boards ~~with~~. Equally significant, all these people -- participants in the public service arena -- in turn were friends

with the people who sat on the Senator's committee--those people too were public interest veterans. Who knows, ~~who,~~ who knows who? Now, there is nothing inherently wrong in people who know you giving recommendations. I suspect almost everyone would agree. However, remember that in private practice this process resulted in my being able, for a very personal gain, to exploit my public service to get a very attractive job. The process of federal judgeship patronage appointments in government is well known as is the ills it occasions. But, is the sublte benefit of having people know you who are influential any recommend you or evaluate you less dangerous than direct patronage? Is the most qualified person the one who knows the decision makers friends of or the themselves and has impressed them for whatever reason? How does the really smart lawyer with extraordinary legal skill equalize the field and get selected on merit? Now, like with all these issues, the question gets fudged and lost in the quagmire of how do you define "qualified." Some would say that an individual whose talent hasn't come to the attention of others may not have all the necessary skills for a public position. But this type of answer begs the ~~question~~ issue and doesn't address how one could minimize should influence. Should we control it? Assuming obviously, however, that one has accepted the proposition that the influence of who you know is an ill, how do you control it?

~~For many years,~~ As a result most governments and good government groups have centered their attention on controlling the contributions of special interest groups, generally businesses and corporations, to political campaigns and in limiting the lobbying efforts of former public employees immediately after they leave

office. For example, we have the Federal Elections Law and many states, and cities, including New York City have passed comprehensive laws not just limiting contributions to campaigns but imposing extensive reporting requirements about both expenditures and contributions. We have federal laws on lobbyist reporting their work and contributions and on elected officials accepting payments or benefits from lobbyist. All the complicated and extensive ethics and conflict laws and regulations, however, are generally not enough fully to address the subtle forms of public service exploitation in private practice.

I will be drawing many examples brought to my attention on this issue by my prior service on NY City's Campaign Finance Board. I was a founding member of that Board and participated in formulating NYCity's comprehensive regulations on campaigns. I served on the Board with pride until my appointed to the bench. NYCity's campaign rules have been praised and touted as examplery by many good government groups. My experience on this Board taught me some very important lessons. No matter how stringent and detailed your rules might be, those intent on evading them will manage to find a way and those intent on breaking them will. For example, NYC's campaign law limits not just contributions to but expenditures by campaigns. Exempted from the campaign expenditure limit are those expenses related to complying with the law. In this last election in NEw York City, Mayor Dinkin's campaign was investigated because they attributed to this exemption a very high percentage of the salaries of some of their most costly campaign

workers, like the Campaign Manager. Now I was not a member of the Board during this investigation and am only relating what I have read in the papers, but the Board disallowed these deductions and fined the Dinkins campaign over a quarter of million dollars for false reporting. This is not an insignificant amount when your limit for the entire campaign cycle is only about, if I recall correctly, 4mil, and you are in the last week of a close race. The Board has announced that it is now thinking of passing a rule that would limit the campaign law compliance exemption to 15% of total expenditures. Again, I do not suggest that the Dinkins campaign intentionally broke the law, I simply point out that for every ethics rule some one will seek a way around it.

Ethical rules by their very nature are generally self-regulating. Few organizations or agencies have the resources to investigate fully the panoply of ethical violations that arise. The rather limited success of bar associations in monitoring our profession is a testament to this failure. Just last year, New York State's insurance reimbursement to victims of legal malpractice totalled over, I believe, 10 million dollars.

~~Those bent to break ethical guidelines are rarely caught.~~ Now, influence peddling is rarely committed to writing or visible. While on the City's Campaign Board, I was disappointed to learn that a partner in a major City law firm had arranged to have a number of his partners give contributions to a campaign and then had the firm reimburse the partners for their outlay. Our ~~Borad's~~ Board's law limited the contributions a partnership or a corporation could

make, therefore, by having the individual partners write checks, the firm's contributions limits were ignored. The law firm was investigated by the NY CIty District Attorney's office and ultimately reached an agreement where it was not prosecuted in exchange for paying a fine of over 100, 000. Now, at moments I wasn't sure whether I was disappointed because members of our bar were implicated in a charge of intentionally seeking to violate laws or whether I was disappointed that they were so ignorant in how they went about their actions. Issuing their partners back-to-back checks for contributions given to the campaigns seemed rather unsophisticated. The episode, however, made me realized that it would have taken very little for the firm to evade the law, it simply could have waited until the end of year and silently incorporated contributions into its compensation calculations for its partners

Well do these limitations in policing ethical rules mean that we shouldn't have them? Absolutely not, despite the burdens imposed by such rules and even in the face of their non-enforcement history, ethical rules set the parameters of what we as a society find acceptable. In all human pursuits, we have to rely on the good will of the participants in our endeavors. No one has the resources to enforce all laws. By having rules, however, we stimulate discussion and we stretch ourselves to improve our commitments to our goals. Accordingly, I excuse my selection of my topic today by pointing out that the rules I ask you to think about are not intended to scare you away from public service. Neither do I

believe the rules should be thought of as burdens on public service. Instead, I encourage you to accept the consideration of them to inform your conduct as you make choices in the future of what limits you will set upon yourselves when you leave public service and begin earning a living.

Among the campaign promises that President Clinton has had difficulty in achieving, has been in honoring his commitment to pass ethical rules for his administration which would be the most exacting of their kind. Now, the President has passed rules which are much more comprehensive than his predecessors. Nevertheless, with many private business candidates indicating they could not accept a place in his administration if the broad rules he originally proposed were passed, President Clinton had to reduce the scope of his rules. SO, from an original proposal that would have barred an administration employee from lobbying for five years before any federal agency, the new executive order he passed bars lobbying only from those agencies an individual supervised. The rule, however, does not prohibit the aide from working for an organization that does lobby in this way, but only limits his or her personal lobbying efforts. The way around this rule is self-evident. As the NY times observed "remote control" lobbying is almost impossible to detect and can be done without violating the letter of the rule, although it might violate its spirit. For example, the rule does not appear to prohibit a former agency employee from explaining to a colleague how the public aspects of his former agency operate.

Not just lobbying is controlled by regulation for a period of time but other typical rules bar lawyers from arguing cases or handling cases before agencies they have worked with for a period of time. However, just like remote control lobbying, this rule does not control the influence and benefit of not who you know but what you know about government regulations and rules. Although Most government rules bar appearance before an agency for a period of time, the rule doesn't bar the attorney from giving clients legal opinions or from exploiting the special knowledge imparted by working in any area of the law while in public service. This may account for why so many lawyers who practice tax law were IRS agents. Recognizing that particularly for lawyers their is an advantage solely in specialized knowledge, should we be limiting their ability not just to practice before an agency but to practice in an area at all for a period of time? How long is enough? Should time measure it or if not, what circumstances. Do we consider evening the playing field by keeping a player out all together. Now, there is the argument that a public service employee was disadvantaged by poor pay for a period of time, and should not be kept from making a living for a longer period. However, the presumptions of that argument may be changing in our society. With the recession, for example, many mayor law firms have reduced their staffs. With that reduction has come a very talented pool of individuals to the public world. But there as well, jobs are limited and can one, in a recessive economy, really say that anyone who has had a job at all is "disadvantaged" because pay is low? I

doubt the unemployed lawyers out their would agree.

Well, what is wrong with special knowledge about a field? In a vacuum, nothing, but where does the possession of that knowledge unfairly disadvantage an opponent and isn't the public weal harmed when those who have served it, denigrate it by manipulating it. I venture no opinion on right or wrong here, I simply raise the question and ask whether recognizing the question, the bars in private praction should be broader than they now are. Should you bar lawyers from practicing in their specialty? Should that bar be total for the government entity with which an attorney worked so that the lawyer shouldn't work for a firm that does practice before that agency? How far the bar?

And, what do we do about sublte influence. There are many government entities, for example, who now put out their legal work for bidding. Yet, lawyering is a service which has very little objective criteria for measurement, You can ask a law firm how many cases have you handled in this area of the law but the inquiry has limited value because it tells you nothing about the complexity or quality of the cases handled. I can assure you that multimillion claims are often less complex than the habeas cases that come before me. Thus, bidding has its disadvantages for the public weal and in any event, it is not a fool proof way of controlling influence. Who gets invited to bid sometimes depends on who know who and knowledge imparted between friends on how to attractively structure a bid is valuable information. Finally, in close bids, a former agency employee whose talent is known, still

has an advantage. Is there something wrong is giving or selecting a friend whose work we know to be good something bad? Why do we usually say no. Most lawyers send work to law shcool friends and for sure, lawyers often send work to people they worked with in public service. Do we control that -- how? Should we bar it? Should we have rules requiring that people on selection committees for granting jobs or appointments never review the applications of friends. Should you require selection committees to set forth their prior experience with an applicant who they are proposing. Should you require selection committee members from involving themselves at all in a process in which they know a lead contender? How do or do you want to make up for personal knowledge gained through public service. When and where?

I started my saying that I was a proponent of public service. Doing good for people is generally the highest reward of public service. It would be naive and disingenuous for anyone to argue that all use of the knowledge and contacts developed in public service should be outlawed. Use of public service in private practice is not and should not be a "dirty" thing. As I explained earlier, while at Yale, I went through a fairly traditional career - I did journal, I worked for a big law firm, I was interviewing till almost the end exclusively with firms. Fortuitously, one evening I was leaving the library when I smelt food in a conference and I walked in. A panel on public service job alternatives was going on and Robert Morgenthau, the DA of Manhattan and former US ATTorney of the Souther District of New York was speaking. He was

describing the work of his office, and at the end of his speech in which he had touted the importance of the work, its challenge, etc, he said to the group that he could promise anyone that came to work for him the greatest amount of responsibility and the power to exercise it in cases at an earliest point of our careers. He predicted that it would be years before anyone who left his office would be given as much responsibility and no other lawyers out of school would be given comparable experience. Having just spent a summer working in a big and famous law firm, and having watched a seventh year associate worked almost 72 hours straight on a temporary restraining order and then seeing the partner briefed for an hour argue the case, Mr. Morgenthau convinced me I was on the wrong track. I spoke to him that night, interviewed with him the next day and he invited me to NY. I went and at the end of the day, he offered me a job, I ~~thought~~ took it and have never regretted the decision. ~~The path he gave~~ does he opened me has led to my ~~doing~~ having the best job any lawyer could ever have--being a judge, and particularly a federal judge. What Bob Morgenthau didn't tell me was that the alumni from his employment populated all levels of government, that my co-workers over time would rise to high levels of government and that the friendships I formed in my work in his office and by my association with him would be important the rest of my life. This is important for you to know and what is equally important to appreciate is that the process has great value. Part of that process, however, is recognizing that we should not abuse it and should, as part of our commitment to our ideals, strengthen by

thought and discussion the close questions. I hope you are not disappointed by my not presenting a detailed ethics proposal. I did not do so because groups like Common Cause spend their time developing those proposals and they are a better source for specific ideas. My intent was to stimulate your thought about these issues and to invite you to give them thought as you choose among your career options now and later in your lives. Thank you for having me.

I need only point to the heart breaking example of Elizabeth Holtzman, the former Congresswoman who rose to stardom during the Watergate Congressional investigation and who is soon to be former Comptroller of the City of New York. Ms. Holtzman's political career of twenty-five years has been halted by the taking of a political contribution from a bank whose affiliate was actively seeking and subsequently was granted by Holtzman's office a significant part of the city bond business. There are many questions concerning the Holtzman situation and I do not mean to imply that she violated any laws or even any ethical rules, but I use her example only to suggest that the fine line between public service and private interest is always a close one.

HOGAN-MORGENTHAU AWARD
JANUARY 17, 1995 -- TAVERN ON THE GREEN

I AM DELIGHTED TO BE HERE TONIGHT. THIS EVENING PROVIDES ME WITH THREE PRECIOUS OPPORTUNITIES. THE FIRST IS TO BE HUMBLED BY SHARING THE HOGAN-MORGENTHAU AWARD WITH ITS MANY TALENTED AND ILLUSTRIOUS FORMER RECIPIENTS. THIS AWARD IS A TRIBUTE TO THE VALUES OF PROSECUTORIAL EXCELLENCE AND COMMITMENT TO PUBLIC SERVICE THAT EXEMPLIFIES THE LEGACIES OF FRANK HOGAN AND ROBERT MORGENTHAU. THE FORMER RECIPIENTS OF THIS AWARD, LIKE MY DISTINGUISHED COLLEAGUES ON THE BENCH JOHN KEENAN AND PIERRE LEVAL, HAVE ALL CONTRIBUTED GREATLY TO THOSE VALUES AND I AM DEEPLY PRIVILEGED TO HAVE BEEN SELECTED FOR THE HONOR OF CELEBRATING THE SIXTIETH YEAR ANNIVERSARY OF THE HOGAN-MORGENTHAU ASSOCIATION WITH THEM AND ALL OF YOU.

THE SECOND OPPORTUNITY I HAVE TONIGHT IS TO THANK THE MANY FRIENDS I WAS FORTUNATE TO HAVE MET DURING MY YEARS IN THE

MANHATTAN DA'S OFFICE. ALL OF YOU SUPPORTED AND NURTURED ME DURING THOSE YEARS WHEN I FIRST WAS LEARNING HOW TO LAWYER. YOU SHARED WITH ME THE SOMETIMES EXHILARATING AND OTHER TIMES FRUSTRATING MOMENTS BEFORE PATIENT JUDGES LIKE JUSTICE BURTON ROBERTS AND ACCOMMODATING ADVERSARIES LIKE VERNON MASON. YOU ALL TAUGHT ME MUCH AND I AM ETERNALLY GRATEFUL FOR ALL YOU GAVE ME AND THE FRIENDSHIPS YOU CONTINUE TO SHARE WITH ME NOW.

I ALSO WANTED TO TAKE A MOMENT TO EXPRESS MY APPRECIATION TO THE THREE SUPERVISORS AND FRIENDS FROM THE DA'S OFFICE WITH WHOM I HAD THE MOST CONTACT -- JOHN FRIED, WARREN MURRAY AND RICHARD GIRGENTI. I WAS FORTUNATE TO HAVE WORKED UNDER THE BEST BOB MORGENTHAU'S OFFICE HAD TO OFFER -- INDIVIDUALS OF EXTRAORDINARY LEGAL SKILLS, INTELLIGENCE, AND INTEGRITY. ALL OF YOU CAN TAKE CREDIT FOR THE GOOD SKILLS I PICKED UP AND DISCLAIM THE BAD ONES I DEVELOPED ON MY OWN AND TO

WHICH MANY OF THE LAWYERS WHO APPEAR BEFORE ME NOW ARE ATTESTING. TO MY MANY FRIENDS HERE TONIGHT IT IS WONDERFUL TO SEE YOU ALL AND I THANK YOU FOR SHARING THIS EVENING WITH ME.

MY THIRD OPPORTUNITY TONIGHT IS TO PUBLICLY THANK THE BOSS-- ROBERT MORGENTHAU -- FOR THE MANNER IN WHICH HE CHANGED MY LIFE FROM THE FIRST MOMENT WE MET. BOB IS UNLIKELY TO REMEMBER OUR FIRST MEETING. IT OCCURRED IN A SITUATION AND UNDER CIRCUMSTANCES WHICH I UNDERSTAND HAVE HAPPENED WITH MANY OTHERS. LIKE FOR MANY OTHERS, HOWEVER, A COMMON MOMENT FOR HIM, WAS A LIFE ALTERING MOMENT FOR ME.

I MET BOB AT OUR MUTUAL ALMA MATER, YALE. I WAS A THIRD YEAR LAW STUDENT WHO HAD BEEN STUDYING A TAX LAW TREATISE IN THE LIBRARY. CONTRARY TO POPULAR BELIEF, YALIES DO OCCASIONALLY READ BOOKS ON THE LAW INSTEAD OF ON POLICY, PARTICULARLY WHEN PROFESSORS VISITING FROM HARVARD ARE TEACHING THE COURSE.

SOMEWHERE IN THE EARLY EVENING I TOOK A BREAK AND THE INSATIABLE APPETITE OF STUDENT LIFE HIT ME -- NO, IT WAS NOT THE PANG OF INTELLECTUAL HUNGER -- IT WAS THE HUNGER PANG FOR FOOD AND DRINK. DOWN THE HALL FROM THE LIBRARY I SAW CHEESE AND WINE IN THE BACK OF THE THIRD FLOOR CONFERENCE ROOM AND THAT WAS MORE THAN ENOUGH TO DRAW MY ATTENTION. THE ASSEMBLED SPEAKERS IN THE ROOM WERE PUBLIC INTEREST LAWYERS WHO WERE DISCUSSING THE ALTERNATIVES TO PRIVATE PRACTICE. I DON'T REMEMBER THE OTHER SPEAKERS BECAUSE BOB MORGENTHAU -- FORTUNATELY FOR ME WHO WAS ONLY THERE FOR THE NUTRIENTS IN THE ROOM -- WAS THE LAST SPEAKER BEING INTRODUCED. EQUALLY LUCKY FOR ME, BOB DECIDED HE DIDN'T WANT TO SPEAK LONG AND ANNOUNCED THAT AS THE LAST SPEAKER HE WOULD KEEP IT SHORT. I HAD HIT PAY DIRT AND DECIDED TO STAY AND LISTEN.

AFTER AFFIRMING THE MANY BENEFITS OF PUBLIC SERVICE WHICH THE OTHER SPEAKERS HAD APPARENTLY DISCUSSED, BOB DESCRIBED

HIS OFFICE AND ITS WORK. HE INDICATED THAT A POSITION WITH HIS OFFICE DIFFERED FROM ALMOST ALL OTHER PUBLIC AND PRIVATE WORK BECAUSE ONLY IN HIS OFFICE WOULD YOU BE ACTUALLY TRYING A CASE WITHIN YOUR FIRST YEAR AND WHERE YOU WOULD HAVE SIGNIFICANT AND ULTIMATE RESPONSIBILITY IN THE DEVELOPMENT AND PRESENTATION OF YOUR CASES. AT 24-25 YEARS OF AGE, BOB EXPLAINED, YOU WOULD DO MORE IN A COURTROOM THAN MANY LAWYERS DID IN A LIFETIME.

MANY OF YOU KNOW THAT I WAS BORN AND RAISED IN THE SOUTH BRONX AND HAVE HAD A LIFE-LONG COMMITMENT TO SERVING MY COMMUNITY. MY ATTRACTION TO LAWYERING STARTED WITH WATCHING PERRY MASON -- I AM A CHILD OF TELEVISION. I MAY HAVE BEEN THE ONLY FAN OF THE SHOW WHO LIKED THE EVER LOSING PROSECUTOR, BERGER. MY LIKE FOR HIM DEVELOPED FROM ONE EPISODE IN WHICH PERRY MASON EXPRESSED SYMPATHY FOR THE FRUSTRATION BERGER HAD TO BE FEELING AFTER WORKING SO HARD ON HIS CASE AND HAVING IT

DISMISSED. BERGER RESPONDED BY OBSERVING THAT AS A PROSECUTOR HIS JOB WAS TO FIND THE TRUTH AND THAT IF THE TRUTH LED TO THE ACQUITTAL OF THE INNOCENT AND THE DISMISSAL OF HIS CASE, THEN HE HAD DONE HIS JOB RIGHT AND JUSTICE HAD BEEN SERVED. HIS SPEECH STAYED WITH ME MY ENTIRE LIFE AND SHAPED MY PERCEPTION OF WHAT PROSECUTORS DID. EVERY ONCE IN A WHILE TELEVISION DOES A GOOD THING.

HOWEVER, DESPITE MY INVOLVEMENT IN PUBLIC SERVICE ACTIVITIES IN COLLEGE AND LAW SCHOOL, MY CAREER IN LAW SCHOOL HAD GOTTEN TRACKED ON A TRADITIONAL PATH -- FRIENDS WERE TALKING TO ME ABOUT CLERKING AND I HAD SPENT A SUMMER AT A TOP TEN MIDTOWN FIRM. I WAS INTERVIEWING AT FIRMS IN OTHER STATES BECAUSE MY THEN HUSBAND WAS APPLYING TO GRADUATE SCHOOLS THROUGHOUT THE COUNTRY. I HAD AN INTEREST IN INTERNATIONAL LAW AND HAD APPLIED TO THE DEPT OF STATE, BUT I WAS NOT CONSIDERING ANY OTHER PUBLIC

POSITIONS UNTIL I HEARD BOB TALK. HE SPARKED BY MEMORY ABOUT WHAT I HAD THOUGHT LAW WAS ABOUT -- SEEKING JUSTICE IN A COURTROOM. I STOOD ON THE WINE AND CHEESE LINE WITH BOB AND CHATTED WITH HIM -- I MIGHT HAVE BEEN TEMPORARILY DISTRACTED FROM WHAT HAD DRAWN ME TO THAT ROOM -- FOOD AND DRINK -- BUT I NEVER PERMANENTLY FORGET MY PRIORITIES. I ASKED BOB QUESTIONS ABOUT HIS LIFE AND WHERE HE HAD BEEN AND WHAT HE LIKED ABOUT EACH POSITION. TO THIS DAY I DON'T KNOW WHY HE DIDN'T WRITE ME OFF AS COMPLETELY USELESS, I HAD NO IDEA WHO HE WAS OR WHAT HE HAD ACCOMPLISHED IN LIFE. I DID FIND OUT FAIRLY QUICKLY. DESPITE MY CLEAR IGNORANCE, BOB DIDN'T WRITE ME OFF AND HE ASKED ME TO INTERVIEW WITH HIM THE NEXT DAY, WHICH I DID.

HE IN TURN GOT MY RESUME FROM THE CAREER OFFICE AND SPOKE TO MUTUAL FRIENDS AT THE SCHOOL. BY THE TIME I GOT TO THE INTERVIEW, WE OVERSPENT OUR ALLOTTED TIME TALKING ABOUT THE

VARIOUS ACTIVITIES I HAD BEEN INVOLVED IN AND HE SOLD ME ON VISITING HIS OFFICE. TWO OR THREE WEEKS LATER, I VISITED THE OFFICE AND SPENT A DAY WITH ANOTHER YALIE, JESSICA DE GRASSIA, TOURING, LOOKING AND ABSORBING. WHEN BOB OFFERED ME A JOB -- I SAID YES BUT HAD THE FURTHER TEMERITY TO EXPLAIN TO BOB THAT MY ACCEPTANCE DEPENDED UPON MY HUSBAND GETTING INTO A GRADUATE PROGRAM HE LIKED IN NYC. MY THEN HUSBAND'S GRADUATE PLANS DIDN'T FINALIZED UNTIL THE SUMMER, YET BOB KEPT HIS OFFER OPEN AND IN AUGUST 1979 MY LIFE IN THE DA'S OFFICE BEGAN.

I HAD HAD ONE TRIAL ADVOCACY COURSE AT YALE AND DONE BARRISTERS UNION, A MOCK TRIAL EXERCISE. MY EDUCATIONAL TRAINING IN CRIMINAL LAW WAS LIMITED TO MY FIRST YEAR COURSES. I WAS SURELY ILL TRAINED WHEN I BEGAN MY CAREER IN HIS OFFICE. YET, BOB TOOK A CHANCE AND GAVE ME AN INVALUABLE GIFT BY HIRING ME. I DON'T KNOW HOW HE SAW THE CHORD IN ME THAT RESPONDED SO STRONGLY

TO TRIAL WORK. I LOVED LITIGATING. I LOVED BEING A PROSECUTOR. IT WAS WONDERFUL AND ENORMOUSLY GRATIFYING WORK THAT I ENJOYED TREMENDOUSLY. MOST OF ALL, HOWEVER, I LOVED BEING IN AN OFFICE SURROUNDED BY PEOPLE WHOSE VALUES I RESPECTED AND WHO TAUGHT ME SO MANY IMPORTANT LESSONS.

I WAS TAUGHT TO BE THOROUGH IN MY INVESTIGATIONS, CAREFUL IN MY FACT FINDING, METICULOUS IN MY LEGAL ARGUMENTS. ALL OF THIS WHILE I JUGGLED HUNDREDS OF CASES. I WAS TAUGHT TO APPLY FACTS TO LAW -- THE CORNERSTONE OF LAWYERING. I WAS TAUGHT TO THINK ABOUT THE NEEDS OF SOCIETY AND TO RESPOND TO THOSE NEEDS BY PROSECUTING VIGOROUSLY AND WITH PASSION. YET, MOST OF ALL, I WAS TAUGHT TO DO JUSTICE. IT IS THAT LESSON OF JUSTICE WHICH HAS STAYED WITH ME THROUGHOUT MY CAREER AND IT IS THE CALL TO DO MY WORK JUSTLY UPON WHICH I NOW ATTEMPT TO STRUCTURE MY LIFE AS A JUDGE.

YOU SEE, IN BOB MORGENTHAU'S OFFICE I LEARNED THAT JUSTICE WAS NOT EASILY DEFINED -- THAT IT WAS BOTH A PROCESS AND A RESULT THAT RELIED UPON FAIRNESS AND INTEGRITY. PART OF THE PROCESS WAS IN INVESTIGATING THOROUGHLY AND OBJECTIVELY TO ENSURE ALWAYS THAT ONLY THE LEGALLY GUILTY WERE PROSECUTED. I REMEMBER MANY A SESSION IN JOHN FRIED'S AND THEN WARREN MURRAY'S OFFICE IN WHICH WE DISCUSSED NOT THE PROSECUTION OF CASES BUT THEIR DISMISSALS BECAUSE WE SIMPLY HAD INSUFFICIENT OR UNPERSUASIVE EVIDENCE. IN THE OFFICE I WAS A PART OF, IT WAS NEVER THE VERDICT AT THE END OF THE CASE THAT MATTERED BUT WHETHER WE HAD CAREFULLY AND FULLY INVESTIGATED ALL AVENUES OF EVIDENCE, PUT FORTH THE BEST AND THE MOST POTENT ARGUMENTS IN A SKILLED MANNER AND FAIRLY PRESENTED THE EVIDENCE TO THE JURY FOR DETERMINATION.

I ALSO REMEMBER MANY A SESSION WITH JOHN AND WARREN WHEN WE TALKED ABOUT WHAT WAS FAIR AND JUST IN THE PLEA OFFERS WE

EXTENDED -- FAIR AND JUST IN LIGHT OF THE STRENGTH OF OUR CASE AND ITS IMPACT ON BOTH SOCIETY AND THE DEFENDANT. ALTHOUGH VIGOROUS PROSECUTION WAS IMPORTANT, SO WAS COMPASSION WHEN THE CIRCUMSTANCES WARRANTED IT.

I KNOW THAT AS THE OFFICE HAS GROWN, IT HAS ALMOST DOUBLED SINCE MY TIME THERE, AND THAT THERE HAS BEEN A GREATER BUREAUCRACY PUT IN PLACE. I WORRY THAT WITH SIZE AND THE EMPHASIS ON INCREASED LAW ENFORCEMENT IN OUR SOCIETY, THAT THOSE IN SUPERVISORY ROLES WILL LOSE SIGHT OF THE IMPORTANCE OF ENCOURAGING YOUNG PROSECUTORS TO REMEMBER THAT JUSTICE WINS WHEN WHAT THEY DO IS DONE FAIRLY AND WITH COMPASSION FOR ALL PARTICIPANTS IN THE PROCESS. VICTIMS UNQUESTIONABLY MUST BE PROTECTED BUT WE AS A SOCIETY SUFFER IRREPARABLE HARM WHEN THAT GOAL SUPERSEDES RESPECT FOR CONSTITUTIONAL PROCESSES AND OBJECTIVE AND HUMANE EVALUATION OF CASES.

THERE IS NO EASY DEFINITION TO THE WORD JUSTICE. BECAUSE OUR JURISPRUDENCE DEVELOPS FROM THE FACTS OF CASES, OUR JUSTICE ENCOMPASSES A COMPLEX IDEA TIED TO THE CIRCUMSTANCES OF EACH SITUATION. IN MANY RESPECTS, THE COURTS AND LAW ARE THE LEAST SUITED INSTITUTIONS TO RENDER JUSTICE BECAUSE THEY ARE NOT SYSTEMS STRUCTURED ON COMPROMISE. WE HAVE BUILT PLEA BARGAINING AND SETTLEMENTS INTO THESE INSTITUTIONS BUT WE HAVE DONE THIS BECAUSE THE END RESULT OF LEGAL PROCESS IS TO FIND A WINNER. HOWEVER, FOR EVERY WINNER THERE IS A LOSER, AND OFTEN THE LOSER IS HIM OR HERSELF A VICTIM OF THE ILLS OF OUR SOCIETY.

DESPITE THE FACT THAT THERE IS NO EASY DEFINITION TO THE WORD "JUSTICE," NOT JUST LAWYERS BUT ALMOST EVERY PERSON IN OUR SOCIETY IS MOVED BY THE WORD. IT IS A WORD EMBODIED WITH A SPIRIT THAT RINGS IN THE HEARTS OF PEOPLE. IT IS AN ELEGANT AND BEAUTIFUL WORD THAT MOVES PEOPLE TO BELIEVE THAT THE LAW IS

SOMETHING SPECIAL. THEREFORE, DESPITE THE DIFFICULTY IN DEFINING THE WORD, THOSE OF US WHO CHOOSE THE LAW AS OUR PROFESSION ARE COMPELLED TO BE FOREVER VIGILANT IN GIVING THE CONCEPT OF JUSTICE MEANING AND IN SPENDING TIME REGULARLY IN ITS PURSUIT.

I AM MOST GRATEFUL TO BOB MORGENTHAU AND HIS OFFICE IN TEACHING ME HOW IMPORRTANT THE DEMANDS OF JUSTICE ARE. IN BOB'S OFFICE, I LEARNED TO CONSTANTLY STEP OUT OF MY ROLE AS A PROSECUTOR AND TO LISTEN TO MY ADVERSARIES AND TO RESPECT AND APPRECIATE THEIR PERSPECTIVES. IT WAS ALL TOO EASY AS A PROSECUTOR TO FEEL THE PAIN AND SUFFERING OF VICTIMS AND TO FORGET THAT DEFENDANTS, DESPITE WHATEVER ILLEGAL ACT THEY HAD COMMITTED, HOWEVER DESPICABLE THEIR ACTS MAY HAVE BEEN, WERE HUMAN BEINGS WHO HAD FAMILIES AND PEOPLE WHO CARED AND LOVED THEM. APPRECIATING THIS FACT DID NOT EXCUSE THE REPREHENSIBLE ACTS I PROSECUTED BUT IT WAS MY FIRST STEP IN UNDERSTANDING THE

BALANCING OF HUMAN FACTORS JUSTICE REQUIRED.

EQUALLY, AS A PROSECUTOR, I ALSO LEARNED TO APPRECIATE AND RESPECT THE IMPORTANCE AND WORK OF DEFENSE ATTORNEYS AS DEFENDERS OF OUR CONSTITUTION AND ITS PROMISED RIGHTS TO INDIVIDUALS AND TO OUR SOCIETY. BOTH SIDES IN THE CRIMINAL SYSTEM ARE EQUALLY NECESSARY AND EQUALLY IMPORTANT TO DOING JUSTICE. I NEVER SAW DEFENSE ATTORNEYS AS ENEMIES, WE WERE AND ARE SOLDIERS ON THE SAME SIDE ONLY WITH DIFFERENT ROLES. THE GOAL OF THE MISSION IS THE SAME--JUSTICE. I LEARNED THAT JUSTICE DOES NOT HAVE A SIDE. IT IS A RESULT THAT DEPENDS ON A FAIR PROCESS BEING HONORED. IT IS RESPECT FOR THE INTEGRITY OF A PROSECUTOR'S WORD AND ACTION THAT TYPIFIES THE BEST OF THE HOGEN-MORGENTHAU TRADITIONS, AND IT IS THAT INTEGRITY WHICH I WAS TAUGHT AND FOR WHICH I AM GRATEFUL.

I HOPE, AND EXPECT BECAUSE IT IS BOB MORGENTHAU'S

OFFICE, THAT THE YOUNG PROSECUTORS OF TODAY ARE ENCOURAGED TO LEARN AND HOLD SACRED THE THINGS I WAS TAUGHT. IT WAS THOSE LESSONS THAT MADE MY WORK IN BOB'S OFFICE VALUABLE. BOB -- THAT CHANCE MEETING BETWEEN US WAS THE MOST SPECIAL MOMENT OF MY LIFE. I KNOW THAT MY STORY IS VERY SIMILAR TO THAT OF MANY HERE -- IF NOT IDENTICAL IN CIRCUMSTANCE OF MEETING, AT LEAST IDENTICAL IN RESULT -- WE BECAME LAWYERS PROUD TO HAVE BEEN A PART OF YOUR OFFICE, GRATEFUL FOR THE TIME WE SPENT THERE AND INDEBTED FOR THE MANY GIFTS IT GAVE US. ON MY PERSONAL BEHALF-- THANKS TO YOU AND TO MY MANY FRIENDS HERE WHO MADE MY EXPERIENCE SO EXTRAORDINARY.

WOMEN IN THE JUDICIARY

Panel Presentation - the 40th National Conference of Law Reviews
March 17, 1994, The Condado Plaza Hotel, Puerto Rico

When I finished law school in 1979, there were no women judges on the Supreme Court or on the highest court of my home state, New York. This past year alone there has been a quantum leap in the representation of women in the legal profession, and particularly in the judiciary. In addition to the appointment of the first female United States Attorney General, Janet Reno, and the election of the first female, and only Hispanic, President, Roberta Cooper Ramos, of the American Bar Association, an institution founded in 1878, we have seen the appointment of a second female justice on the Supreme Court, Associate Justice Ruth Bader Ginsburg, the appointment of a female chief judge, Justice Judith Kaye, to the Court of Appeals, the highest state court of New York, and the appointment to that same court of a second female judge, also not insignificantly, the first hispanic, Judge Carmen Beauchamp Ciprack.

As of 1992, women sat on the highest courts of almost all of the states and the territories including Puerto Rico, who can claim with pride the service of my esteemed co-panelist, The Honorable Miriam Naveira de Rodon, Associate Judge of the Supreme Court of Puerto Rico. One Supreme Court, that of Minnesota, has

a majority of women justices.

As of September 1992, the total federal judiciary, consisting of circuit, district, bankruptcy and magistrate judges, was 13.4% women. As recently as 1965, the federal bench had had only three women serve. Judges who are women on the federal bench are likely to increase significantly in the near future since the New York Times reported on January 18, 1994, that 39% of President Clinton's nominations to the federal judiciary in his first year have been women and he has vowed to continue that statistical pace in his future nominations.

These figures and the recent appointments are heartwarming. Nevertheless, much still remains to happen. Let us not forget that between the appointment of Justice Sandra Day O'Conner in 1981 and Justice Ginsburg in 1992, 11 years had passed. Similarly, between Justice Kaye's initial appointment as an associate judge to the New York Court of Appeal in 1983 and Judge Ciprack's appointment this past year, 10 years had also passed. Today, there are still two out of 13 circuit courts and about 53 out of 92 districts courts in which no women sit. There are no district women judges in the federal courts in at least 22 states. Our 13.4 percentage of the federal judiciary translates to only 199 female judges of a total of 1,484 judges in all

levels of the judiciary. Similarly, about 10 state supreme courts still have no women. Even on the courts which do have women, many have only one woman judge. Amalya Kearse, a black woman appointed in 1979, is still the only woman on the Second Circuit of New York. The second black woman to be nominated to a court of appeals. Judith W. Rogers, Chief Judge of the District of Columbia, was only recently named by President Clinton. The first hispanic female federal judges were only appointed in the fall of 1992. We had a banner year with 3 appointments -- myself in the S.D.N.Y. and two colleagues, Judges Baird and Gonzalez to districts in California. We this year will have a fourth female hispanic with the nomination and likely appointment of Martha Vasquez in New Mexico. Yet, we still have no female hispanic circuit court judges or no hispanic, male or female, US Supreme Court judge.

In citing these figure, I do not intend to engage you in or address the polemic discussion of whether the speed or number of appointments of women judges is commensurate with the fact that women have only entered the profession in any significant numbers in the last twenty years. Neither do I intend to engage in the dangerous and counterproductive discussion of whether the speed and number of appointments of

female judges is greater or lesser than that of people of color. Professor Stephen Carter of Yale Law School in his recent book on Affirmative Action points out that we excluded people do ourselves a disservice by comparative statistics or analysis. I accept and endorse his proposition that each of our experiences should be valued, assessed and appreciated independently.

I have, instead, raised these statistics as a base from which to discuss what my colleague Judge Miriam G. Cedarbaum of the S.D.N.Y. in a speech addressing "Women on the Federal Bench" and reprinted in Vol. 73 of the Boston University Law Review [page 39, at 42], described as "the difficulty question of what the history and statistics mean?" In her speech, Judge Cedarbaum expressed her belief that the number of women on the bench was still statistically insignificant and that therefore, we could not draw valid scientific conclusions from the acts of so few.

Yet, we do have women in more significant numbers on the bench, and no one can or should ignore asking and pondering what that will mean, or not mean, in the development of the law. I can not and do not claim this issue as personally my own. In recent years there has been an explosion of research and writing in this area. For those of you interested in the topic, I commend to you a wonderful compilation of articles written on the

subject in Volume 77 of Judicature, The Journal of the American Judicature Society for November-December 1993. This Journal is published out of Chicago, Illinois.

Judge Cedarbaum in her speech, however, expresses concern with any analysis of women on the bench which begins, and presumably ends, with a conclusion that women are different than men. She sees danger in presuming that judging should be gender or anything else based. She rightly points out that the perception of differences between men and women is what led to many paternalistic laws and to the denial to women of the right to vote because we could not "reason" or think "logically" but instead acted "intuitively".

While recognizing the potential effect of individual experiences on perceptions, Judge Cedarbaum nevertheless believes that judges must transcend their personal sympathies and prejudices and aspire to and achieve a greater degree of fairness and integrity based on the reason of law. From a person, who happens to be a women, like Judge Cedarbaum, one can easily see the genesis of her conclusions. She is a wonderful judge -- patient, kind, and devoted to the law. She is the epitome of fairness. She has been tremendously supportive of me this past year and a half and she serves as an example of what all judges

should aspire to be.

Yet, although I agree with and attempt to work toward Judge Cedarbaum's aspirations, I wonder whether achieving the goal is possible in all, or even most cases, and I wonder whether by ignoring our differences as women, men or even people of color, if differences exist, we do a disservice both to the law and society.

Just this month, the Supreme Court in Liteky v. United States, has recognized that personal bias and partiality are inherent in the task of judging. In deciding when judges should recuse themselves from cases, the Supreme Court recognized the existence of "appropriate" bias born of reactions that develop during a case from the facts of the case and "inappropriate" bias which stems from "extrajudicial" sources like information passed on by a non-party or ex parte, or from deep seated opinions that make fair judgment impossible. Justice Kennedy in his concurring opinion, joined by three other justices -- a split in our High Court, not something new -- expresses a concern similar to that voiced by Judge Cedarbaum which is that good and bad bias are impossible to determine because they depend so much on historical context and self-perception. Therefore, Justice Kennedy advocates a return to an objective standard in which what a reasonable

person would perceive as unbiased and impartial controls whether a judge disqualifies him or herself. I am not sure this is any less objectionable or more objective than Justice Scalia's majority approach in Liteky that presumed that a "reasonable person" could only be measured within the societal context with its current moraes.

Whatever the reasons why we may have a different perspective as women -- either as some theorists suggest because of our cultural experiences or as others postulate like Prof Carol Gilligan of Harvard University in her book entitled In a Different Voice because we have basic differences in logic and reasoning, is in many respects a small part of the larger practical questions we as women judges and society in general must address. I accept Prof Carter's thesis in his Affirmative Action book that in any group of human beings, there is a diversity of opinions because there is both a diversity of experiences and of thought. Thus, as stated by Prof. Judith Resnik in her article in Vol. 61 of the S. Cal L. Rev. 1877 (1988), entitled On the Bias: Feminist Reconsideration of the Aspirations for Our Judges:

> ...there is not a single voice of feminism, not a feminist approach, but many who are exploring the possible ways of being that are distinct from those structured in a world

> dominated by the power and words of men. Thus, feminist theories of judging are in the midst of creation and are not (and perhaps will never inspire to be) as solidified as the legal doctrine as the legal doctrines of judging can sometimes appear to be"

No one person, judge or nominee, will speak in a feminine or female voice. Yet, because I accept the proposition that, as Prof. Resnik explains, "to judge is an exercise of power" [pg 7] and because as Prof. Martha Minnow of Harvard Law School explains, there is no "objective stance but only a series of perspectives. ... [N]o neutrality, no escape from choice" [Resnik page 10] in judging, I further accept that our experiences as women will in some way affect our decisions. In short, as aptly stated by Prof. Minnow, "Th[e] aspiration to impartiality ... is just that an aspiration rather than a description because it may suppress the inevitable existence of a perspective ... ." What that means to me is that not all women, in all or some circumstances, or me in any particular case or circumstances, but enough women, in enough cases, will make a difference in the process of judging.

The Minnesota Supreme Court has given us an example of this. As reported by Judge Wald in her article entitled Some Real-Life Observations about Judging contained in a comment in Vol. 26 of the Indiana Law Review 173 (1992), the three women on

that court, with the two men dissenting, agreed to grant a protective order against a father's visitation rights when the father abused his child. The Judicature Journal has at least two excellent studies on how women on the U.S. Court of Appeals and on state supreme courts have tended to vote more often than their male counterparts to support claimants in sex discrimination cases and more often in cases involving euphemistically as I refer to them "underdogs" like criminal defendants in search and seizure cases. In a another real life example, in the Menendez trial in California, a jury split six men to six women on whether a lesser verdict should be returned against a son charged, with his brother, in killing their parents. For those of you law students, particularly editors on law journals, lost in the bowels of the law library and intricacies of the Uniform Book on Legal Citations, the Menendez brothers defended the homicides as an act of despair generated by years of abuse. The state prosecuted on the theory of financial gain from the rather sizeable inheritance the brothers may collect if acquitted of the charge. Although the brothers were tried together, they were tried before two separate juries because certain evidence came in against one but not the other brother. Both juries hung but the press has been fascinated by the gender split in the Eric

Menendez verdict voting in which the women wished to acquit or at least bring in a verdict less than the highest count and the men did not.

As recognized by Professor Resnik, Judge Wald, and others, whatever the causes, not one women in any one position, but as a group, we will have an affect on the development of the law and on judging.

In private discussions with me on the topic of differences based on gender in judging, Judge Cedarbaum has pointed out to me that the seminal decisions in race and sex discrimination have come from Supreme Courts composed exclusively of white males. I agree that this is significant except I choose to emphasize that the people who argued the cases before the Supreme Court which changed the legal landscape were largely people of color and women. I recall that Justice Thurmond Marshall, Judge Constance Baker Motley from my court and the first black women appointed to the federal bench and others of the then NAACP argued Brown v. Board of Education. Similarly, Justice Ginsburg, with other women attorneys, was instrumental in advocating and convincing the court that equality of work required equality in the terms and conditions of employment. Whether born from experience or inherent physiological

differences, a possibility I abhor less or discount less than my colleague Judge Cedarbaum, our gender makes and will make a difference in our judging.

Justice O'Connor has often been cited as saying that "a wise old man and a wise old woman reach the same conclusion" in deciding cases. I am not so sure Justice O'Connor is the author of that line since Professor Resnik attributes the line to Supreme Court Justice Coyle. I am also not so sure that I agree with the statement. First, if Prof. Martha Minnow is correct, there can never be a universal definition of "wise." Second, I would hope that a wise woman with the richness of her experiences would, more often than not, reach a better conclusion. What is better?

I like Professor Resnik hope that better will mean a more compassionate, and caring conclusion. Justice O'Connor and my colleague Miriam Cedarbaum would likely say that in their definition of wise, these characteristics are present. Let us not forget, however, that wise men like Oliver Wendel Holmes and Cardozo voted on cases upholding both sex and race discrimination. That until 1972, no Supreme Court case ever upheld the right of a women in a gender discrimination case. I like Prof. Carter believe that we should not be so myopic as to

believe that others of different experiences or backgrounds are incapable of understanding the values of a different group. As Judge Cedarbaum pointed out, nine white men (or at least a majority) on the Supreme Court in the past have done so on many occasions for different issues. However, to understand takes time and effort, components not all people are willing to give. For others, their experiences limit their ability to identify. Yet others, simply do not care. In short, I accept the proposition that a difference there will be by the presence of women on the bench and that my experiences will effect the facts I choose to see as a judge. I hope that I will take the good and extrapolate it further into other areas than those with which I am familiar. I simply do not know exactly what that difference will be in my judging, but I accept there will be some based on my gender and the experiences it has imposed on me.

As pointed out by Elaine Martin in her forward to the Judicature volume:

> Scholars are well placed, numbers-wise-to begin the proposition that the presence of women judges makes a difference in the administration of justice. Yet, a new set of problems arises for such researchers. Just what is meant by difference, and how is it measure? Furthermore, if differences exist, why do they exist and will they persist over time? .... In addition to these empirical questions, there are normative ones. Are these possible gender differences good or bad? Will they improve our system of

laws or harm it?

In summary, Prof. Martin quote informs me that my quest for answers is likely to continue indefinitely. I hope that by raising the questions today, you will start your own evaluations. For women lawyers, what does or should being a women mean in your lawyering. For men lawyers, what areas in your experiences and attitudes do you need to work on to make you capable of reaching those great moments of enlightment which other men in different circumstances have been able to reach.?

For me, since Senator Moynihan sent my name to President Bush in March of 1990, as a potential federal judicial nominee, I have struggled with defining my judicial philosophy. The best I can say now four-and-a-half years later, one-half year since I assumed my responsibilities, is that I have yet to find a definition that satisfies me. I do not believe that I have failed in my endeavor because I do not have opinions or approaches but only because I am not sure today whether those opinions and approaches merit my continuing them. Each day on the bench, I learn something new about the judicial process and its meaning. I am reminded each day that I render decisions that affect people concretely and that I owe them constant and continuous vigilance in checking my assumptions, presumptions and

perspectives and ensuring that to the extent my limited abilities and capabilities permit me, that I reevaluate and change them as circumstances and cases before me require. I can and do, like my colleague Judge Cedarbaum, aspire to be greater than the sum total of my experiences but I accept my limitations, I willingly accept that we who judge must not deny the differences resulting from experience and gender but attempt, as the Supreme Court suggests, continuously to judge when those opinions, sympathies and prejudices are appropriate. There is always danger in relative morality but since there are choices we must make, let us make them by informing ourselves on the questions we must not avoid asking and continuously ponder.

A JUDGE'S GUIDE TO MORE EFFECTIVE ADVOCACY

Keynote Speech -- The 40th National Law Review Conference
March 19, 1994, The Condado Plaza Hotel, Puerto Rico

When I left New York earlier this week, the newscasts were advising us of the impending arrival of the sixteenth snow storm of the winter season. My office told me yesterday that it was snowing yet again in the City. In August, when the New York skies were blue and the vegetation lush, I did not fully appreciate how grateful I would be tonight for the invitation to speak to you. With each passing snow day, my gratitude has increased exponentially.

I join my voice to that of the other speakers tonight who have conveyed appreciation to Cecilia Duquela, Chair of this Conference, for the wonderful job she has done. She has been a delight for me and my staff to deal with and an honorable

representative of a fine law journal and its school. I also thank all of the students of the Revista Juridica de la Universidad Interamericana de Puerto Rico and the Dean and faculty of the law school for hosting this Conference. You have provided a beautiful setting with stimulating topics of discussion and enjoyable events. I have also been delighted to have met the many distinguished guests who have spoken and attended the Conference, some of whom are here tonight. Finally, I thank you the conferees and other guests for the opportunity to share my thoughts as a recently appointed federal judge about the experience of judging and what it has taught me about effective and efficient advocacy. For reasons I will shortly discuss, I have concluded this past year that effectiveness and efficiency in advocacy are synonymous terms for persuasive advocacy.

I selected my topic for tonight in October of this past

year, shortly after the law journal invited me to speak and as I celebrated my first anniversary on the bench. As many do with other important anniversaries, I reflected upon all that had occurred, all that I had learned, and all that remained for me to learn and do. During my nomination process, all of my future colleagues on the bench told me that I was about to be given the privilege of having "the best job in the world." A year and a half later, I join in their opinion.

In no other legal work I know of in the private or public sector is there greater variety and in depth treatment of legal issues than in judging. From the common diversity cases involving personal injury or partnership, corporate or contract disputes to the more complex cases involving antitrust, securities, habeas and other constitutional questions, I, as a federal judge, do not superficially investigate those areas of

law but I learn them in greater depth and at a greater speed than I ever did as an advocate or as a law student in semester long courses. The greater gift, however, is not just the intellectual stimulation of the work but the opportunity I am given to do work that is not merely an academic exercise but which directly and profoundly effects individuals and our society.

In my first year alone, I presided over the class action settlement of claims of institutionalized mentally deficient patients for regular access to greater sun light. I decided a first amendment challenge to an ordinance that banned the display of fixed religious displays in a City's parks. The power of my position became a stark reality for me when I learned that the City Council and its legal staff spent days in emergency sessions considering how to approach my decision. Ultimately, they decided not to appeal my injunction and a menorah was

displayed in the City's park during the Passover season. With a heavy heart because I believe that those charged with doing justice like the police and prosecutors have a responsibility to do their work with the highest degree of integrity, I suppressed evidence in a major narcotics case because I found that the magistrate judge had been misled into issuing a search warrant. Just last month, I presided over a civil forfeiture trial by the United States government against the twenty-five year Clubhouse building of the Hell's Angels Motorcycle Club of New York.

I have done exciting things. However, I have also addressed intellectually less weighty or fascinating matters. In fact, a good portion of my work may fall into that category. Although every case is important to the parties and I try very hard to give all my cases the same degree of care -- albeit not the same time since that is impossible and not necessary for many

issues -- there are routine and frankly boring cases. I have tried a $35,000 sprained ankle case under the Federal Employees Liability Act. I spent weeks writing an opinion on whether non-longshoreperson harbor workers should be treated like longshore persons for purposes of negligence recovery under the Longshoreman's and Harbor Act. If you do not understand the issue or its importance to the defendant, you know now why I spent so much time trying to understand the case and the defense arguments. The Second Circuit affirmed my judgment, describing my opinion as straight forward and on point while explaining that the defense simply had a tortured argument. Here, as a new judge, I thought I was missing something and I repeatedly read the voluminous and turgid submissions of the defense until I finally decided that If I was missing something in the defense argument, I was incapable of finding it. The Second Circuit did

not find it either but the practical lesson I took from the experience was not just that I should trust my legal instincts but that unless I spent less time on incomprehensible submissions, my docket would grind to a screeching halt.

Judge Patricia Wald of the D.C. Circuit Court and Justice Anthony Scalia of the Supreme Court have both adequately and elegantly described the frustrations and burdens of judging. If any of you are interested, Judge Wald's article is entitled "Some Real-Life Observations about Judging" and it appears in the 1992 volume 26 of the Indiana Law Review [at page 173]. Justice Scalia's remarks were delivered before the Fellows of the American Bar Foundation and the National Conference of Bar Presidents on February 19, 1988, and a discussion of Justice Scalia's remarks can be found in an article written by Professor Judith Resnik contained in the 1988 volume 6 of the Southern

California Law Review [at page 1877].

Perhaps because I am so new to the work, however, I have not been disillusioned or frustrated as of yet, and I hope that for the rest of my judicial career, my work remains the "best job in the world." Among my comments to my law clerks and friends as I reflected about my first year, I expressed the regret that I had not judged before I lawyered. When I practiced if I had known a fraction of what I have learned in my first year as a judge, I would have been that much better a lawyer. [As an aside, my actual statement was that I would have been invincible as a lawyer. I had to tone it down for the sake of some decorum and humility.] In some civil law countries, there are different schools for careers as a judge or a lawyer. In our legal system, however, without the experience one gathers as a lawyer, it is impossible to function as a judge and fully understand the

nuances of legal analysis.

As new lawyers, clerking for a judge is probably the next best step to being a judge. Because many of you are editors on law journals, you will likely have this experience. But for those of you who do not and even those of you who do, I bring to your attention the following observations I now, having had the experience of judging, make about effective and, as I have said previously, efficient advocacy. My observations and recommendations are not new and very simple. All were told to me, or I read, in bits and pieces through law school and in my practice. Because most of you are graduating this year, and are just about to begin your careers, I thought it might be helpful to underscore that advise which I now as a judge have grown to more appreciate.

Judge Wald of the D.C. Circuit in her article, [page

178], on Real-Life Judging, states, and I paraphrase in part:

> "The elegant prose, the visionary idea, the qualitative leap forward in the law [by judges has now been] cancelled by . . . practical necessit[ies] . . . ."

Judge Wald was speaking about the practical necessity of reaching consensus among circuit court panels, a difficulty described to you on Thursday by Judge Naveiro de Rodon in her panel discussion. Practical necessities, as recognized by Judge Wald in a different part of her article, however, effect all levels of the judiciary. Although district judges decide cases alone and do not have to work toward consensus, they still have the burdens of an ever burgeoning word-load. Less than 80% of the decisions of district judges are ever appealed. Of the over 100,000 opinions rendered by lower courts in a given year, the Supreme Court, with nine judges, hears slightly over 125 cases a year. When my dear friend and mentor, Judge Jose A. Cabranes of

the United District Court for Connecticut, was asked how he felt when he was reversed by the circuit court, he responded "It does not bother me in the least, I reverse them every day." He is right. Given the almost unreviewable nature of the majority of our decisions, you, as proxies for the interests of your clients, should appreciate how important it is to ensure you capture your judge's attention. This need on your part will grow as Congress increases our burdens by continuing to federalize more crimes and passing more statutes granting remedies to ever wider groups as with the Americans with Disabilities Act. In short, we can not afford to have our dockets grind to a halt because of ineffective or inefficient advocacy.

When I started as a judge in October 1992, I had 376 civil cases reassigned to me. That number represented the average case load in my district. Unlike other districts, I did

not have criminal cases reassigned to me but only began to have new criminal indictments assigned in rotation each week. Nevertheless, in my district, the average case load of criminal cases is about one-third the civil docket, or about 125 criminal cases. In my first year, I rendered about 70 written opinions, of varying lengths and complexity, and a number of other opinions I read into the record. I did reduce my caseload by fifty cases by the end of that first year. However, at the end of my year, three of my colleagues left the district bench -- Judge Pierre Leval to the Second Circuit, Louis Freeh to the F.B.I. and Ken Conboy back to private practice -- and with their departures, my case load in the last five months mushroomed to 428 cases despite the fact that I have rendered just over 50 opinions in that same time period and even more opinions on the record than I had the prior year. Moreover, I now have over 85 pending motions and

over fifty criminal cases on my docket.

My burden is not unique. Judge Anne C. Conway of the United States Middle District of Florida, who took the bench at about the same time I did, had just that past winter of 1993 reported in the American Bar Association Journal on Litigation, Volume 9, that she had 570 civil cases with 1070 motions reassigned to her when she took the bench. She reduced her caseload by 100 cases and her motions to just a little over 500 by the end of her first year. Yet, she reported that despite greater efficiency, she found her motion calendar increasing. Now, her accomplishments have been reached by a herculean effort -- she starts her day at 7:00am and goes through the late evening. I admire her. I am a New Yorker and 7:00 am is a civilized hour to finish the day not start it. I can not achieve efficiency her way. If the federal bench is over burdened,

however, take note that most state courts are in critical emergency situations. New York's lower state court judges have over 1800 cases a piece.

No judge should bear his or her work-load as a badge of honor. One human being, no matter how efficient, can not adequately do justice to all of the cases on dockets this big. Consider the situation in practical terms. There are 365 days in a year. Assuming you have a judge like me who works six days a week and takes some vacations (well, you do see me here), you are left with about 250-275 working days a year. With a case load of over 500 cases, no one case should physically, without regard to desire or dedication -- take more than half a day on a case. Yet, most trials consume at least two days, and many complicated criminal cases at least two weeks. I do not even mention the month and longer trials that are common at least in my district.

The Hells Angel trial and another international narcotics trial each took the last two months before me. Many cases settle without the intervention of a judge. But, many cases are addressed more cursorily and summarily than anyone would want them to be and many cases are not heard at all. In the end, no one is happy -- not the judges who takes pride in their work but are forced to be less attentive than they would like, not the lawyers who labored hard in presenting their arguments and are then treated summarily or delayed for months sometimes years in receiving a decision, and not the parties who want and deserve a fair day in court but do not see it. Unfortunately, in a system this overworked, the claims of some people will not be fairly heard and we can not pretend otherwise.

In assuming my responsibilities, I have immersed myself in books and articles about efficient judging. Each day I learn

more and my mistakes teach me more. Since I anticipate that judging is a continuous learning process, I do not see my improvements ever ending. The rest of my speech now, however, is intended to give you as lawyers some ideas about how to ensure that you, as the agent for your client's interests, get heard in the mounds of papers and cases that exists in the judicial landscape.

My first piece of advice for effective advocacy is write clearly. As it is often said, clear writing reflects clear thinking. Whether it is an unfair conclusion or not, I start with the presumption that a poorly written brief is a product of, if not poor, at least, untrustworthy lawyering because a poor writer is someone who does not care about the art and skill of their profession. As it is also often said -- and I will hereafter stop with the cliches -- there are no natural writers,

just writers who work at developing their skills.

If you have read Strunk and White, Elements of Style, reread it every two years. If you have never read it, do so now. This book is only 77 pages and it manages, succinctly, precisely and elegantly to convey the essence of good writing.

Go back and read a couple of basic grammar books. Most people never go back to basic principles of grammar after their first six years in elementary school. Each time I see a split infinitive, an inconsistent tense structure or the unnecessary use of the passive voice, I blister. These are basic errors that with self-editing, more often than not, are avoidable. To be an advocate, you must love to argue. To argue effectively, you must communicate effectively. There are stronger writers than others. I consider myself merely an average writer. Nevertheless, every advocate should at least strive to be technically correct in

their writing.

Because we are in Puerto Rico, it is important that I underscore that we who are bilingual often have to spend more time and energy in improving our writing. There are natural linguistics explanations for many common errors made by bilingual people. For example, adjectives in Spanish are expressed differently than in English. Descriptive nouns are structured in Spanish with the use of "of". Thus, in Spanish, we do not say "cotton shirt", we say "shirt of cotton" or "camisa de algodon" y no "algodon camisa." Well, as a result of this structure, many Spanish speaking American students often, unconsciously, use convoluted phrasing for simple adjectives. This was brought to my attention in college by a history professor, who later became my thesis advisor and a mentor, and who in my first college semester kindly pointed out to me that "authority of

dictatorship" could more simply and accurately be stated as "dictatorial authority."

To catch many simple and complex mistakes in writing requires that you edit yourself. I am taken aback by how many briefs I receive that appear to be first drafts. I have chastised attorneys in my opinions for slip-shod written presentations. Improvements in writing do not happen magically, you have to work on them. In my chambers, I edit every opinion prepared by my clerks. The simplest opinions go through at least 2 if not 3 drafts by me. I edit more complex opinions as often as 6 to 8 times and periodically more often. Justice Kennard of the California Supreme Court, a very well respected writer, has told me that she and her five clerks, sitting together, edit every line of every opinion. I have no idea how she manages to find the time to do this but her approach should give you a clear

idea of the importance of editing.

My second piece of advice is a collorary to the first - - keep your written submissions brief. No play on words is intended. The reason for this advise is self-evident in the context of the statistics I have given you. Overburdening a judge with every conceivable argument you have found or can conceive is counter-productive. Although most clerks to judges are thorough, every argument in a voluminous brief can not be given equal attention. I say clerks because although I read every brief, I simply do not have time to reread every brief numerous times. I read my clerk's bench memo or draft opinion, I read the briefs and I stop to reread carefully only that brief which is clearly and persuasively written. The best briefs succinctly state their argument, but also concisely summarize, explain and discount their opponent's arguments. That is the brief I turn to

when I am editing the work of my clerks because against that brief I measure whether my clerks have addressed every pertinent argument.

As editors of law journals, you pick up one terrible habit -- string cites. Think of them as nooses you should strive always to loosen from your neck of writing. The habit of thorough and exhaustive research you have learned is absolutely essential to effective advocacy. If a proposition is truly black letter law, however, one cite is enough. Judges, within a few years on the bench, know the history of most major areas of the law. New judges and clerks may not but they do not need for you to educate them in your briefs. Just give them the cites of the one or two cases that best present a history or explanation of the law in the area at issue. Do not give us your learning process on paper, just give us the results of the best arguments

you have found. Take judges to the issue you are addressing and explain why it is an issue at all, i.e. is the law unsettled or unclear, are the facts unclear, is this a new twist to an old problem, do you want the judge to reject existing law and reformulate it, hopefully in your client's favor.

I want to underscore, brevity is not a substitute for thoroughness. Good lawyering requires you to consider and research every conceivable argument for and against the position you are advocating. Inexperienced lawyers particularly spend hours if not days or weeks exploring multiple and innumerable legal dead-ends. Effective lawyering, however, requires you to distill your research and thinking down to its important, best and strongest points. It is heart breaking after laborious and exhaustive research to realize that what you need to say can be said in five pages. As a result, young lawyers often write

lengthy memos or briefs which essentially recount the steps of their research. You are doing yourselves a disservice because you will not capture the attention of the person you must convince if you have lost them in the irrelevant. If you feel compelled by emotional necessity to advise the court or your partners of what you have done, do it in a short footnote.

In short and above all, you must be prepared for every contingency with complete research but your only chance of attracting the attention of harried judges, is to state the important issues of your case up front and succinctly. An efficient presentation means cutting the extraneous, summarizing the important but tangential and concentrating on the significant.

Equally as important to effective advocacy is not misleading the Court about the law or the facts of your case. Do

not cite cases merely to have a cite or take words out of a case to give an impression of a holding when the words when used were in a different context. Before you leave law school, learn the difference between dicta and a holding. Learn what is controlling precedent for the court system you are in. It amazes me how many lawyers cite other district court cases as controlling authority. The only binding precedent upon a district judge is the Supreme Court or its circuit court. Not even the law as established by other circuits controls decisions of a district judge in another circuit. Similarly, in the New York state system, each lower court is only bound to the decisions of the highest court or of its own intermiate appellate division. Further, do not cite a legal principle, without explaining its exceptions, in a footnote at least if the exceptions are not applicable to your case. Clerks spend

countless hours tracking down exceptions they later determine, as you obviously did because you did not mention them in your brief, are not relevant to the case. You should increase your malpractice insurance if you simply missed the exception. Obviously, if there is a case contrary to your position, even if it is a decision by a non-controlling source, cite it to the court. Your entire argument should have explained to the Court why that contrary opinion is not persuasive. If there is an argument that superficially appears applicable or an argument in a related field, bring it to the judge's attention in a footnote and explain why you do not think it is relevant to or distinguishable from your case. The worst thing a judge can ever conclude about you as a lawyer is that your are untrustworthy in your arguments. I was furious the other day when an attorney failed to tell me that the circuit had explicitly left an area of

the law undecided and that three other of my colleagues had issued opinions on the issue contrary to counsel's argument. I know that for those lawyers who do this I rarely if ever give them the benefit of the doubt. I will reserve decision to go back and double check their arguments. If you are in a middle of a trial, that can be a devastating interruption in your presentation as an advocate and will result in long delays in your motions being decided.

There are some lawyers out there who believe that overwhelming a court with papers and documents is a good way of hiding a bad case and delaying judgment against a client. I find this particularly true in papers opposing summary judgment motions. This tactic may work periodically but the price you pay for this type of bad lawyering is that your work and arguments eventually will not be respected. In summary, face the

weaknesses in your case directly and answer up front why the court should ignore or distinguish the weakness from existing law or on the facts.

For my third point, I turn to oral advocacy. My intent here is not to repeat the advise contained in trial advocacy courses on proper and effective opening and closing statements, direct and cross-examinations or motion or appellate arguments. There is a legend of materials on these topics and in a short speech, I could not do justice to the wealth of advise that exists. I simply wish to underscore that brevity and clarity is as important in oral as in written presentations.

Neither jurors as triers of facts nor judges like being inundated with documentary evidence. Most cases can be distilled down to less than half a dozen documents, sometimes just 1 or 2. Yet, I receive boxes and boxes of exhibits in too many cases.

That impresses your client -- until they get your bill for the time and cost of collating and copying. In the interim, you have lost the favorable impression and potence of your valuable documents. To the extent possible, try to get stipulations of facts among counsel and cut out of your presentations all documents relating to those agreed upon facts. Also, prepare a small volume of just the critical documents so the Judge can refer to them easily or take them home without losing an arm to heavy weight. Jurors who sit side by side like sardines in jury boxes appreciate not having to fumble with heavy volumes on their laps and at their feet. Finally, all exhibits should have an index. Moreover, a topic index, listing relevant exhibits under issue headings is also very helpful. When I write my opinions I often have one or more issues about which I would like to more fully look at the evidence. A topic index is invaluable in

assisting that process because even the best organized chronological or theme organized exhibits support or inform various different issues.

Similarly, when you give a judge deposition transcripts, it is useful to give a one page summary of what that witness proves in the deposition testimony and why it is important to your case. That way, the judge will understand why they are reading the materials. Judge Leonard Sand in an 1987 article in the ABA Journal on Litigation, also suggests that parties take one deposition transcript and bracket in different color crayons the designations each party wants in the record. This way the judge gets one transcript, and not separate sheets with each party designating a page and line in the transcript. That kind of cross-referencing to a transcript is time-consuming and frustrating.

Finally, in oral presentations, remember that although some repetition is necessary to ensure that a point is made, less repetition is needed with a judge. Moreover, you lose both the attention and patience of judges and jurors with overly long presentations. If a long presentation is unavoidable, i.e. the witness simply has too much to cover, make sure your beginning explains what you are doing and why and that your end explains again what you have done.

In conclusion, respect the limited time judges have. With thought, the most complex case can not only be explained simply but can be presented simply. Today, effective advocacy requires that you think first and foremost -- how do I make this easy to understand and to absorb in the shortest time possible. Because of necessity, an efficient presentation has become the effective presentation and not infrequently, the winning

presentation.

I will heed my own advise and keep my remarks brief. I hope that you take from your careers as much as I had from my own as a lawyer. I also hope and expect that some of you in the future will have the opportunity to enjoy the privilege and honor of judging. A critical part of that enjoyment in either or both roles starts and ends with doing what you do better each day. It means appreciating the art of your profession and spending time developing your skills. Seeing an effective advocate in court is a magnificent and pleasurable experience for a judge. I also hope that during what I expect will be my long tenure on the bench, I will have the opportunity to have some of you appear before me and that at the end of your presentation, I will be able to say that you have mastered your art. My wishes for successful careers to all of you. Good evening.

El Orgullo y Responsabilidad de Ser Latino y Latina.

Speech given on March 15, 1996 at the Third Annual Awards Banquet & Dinner Dance for the Latino and Latina American Law Students Association of Hofstra University School of Law

Thank you Cynthia for the gracious introduction. I agreed to speak tonight for two reasons. The first was my desire to spend some time with law students from Hofstra. I have met some of you at various bar functions and have been impressed with your enthusiasm and interest in the law and with Latino issues. Unfortunately, your school's distance from Manhattan makes it difficult for me to attend functions that the school holds during the workday. I am grateful that this event is held at night and that you choose me to be your speaker and share in your celebration.

My second reason for coming tonight was sparked by Cynthia's invitation which told me that your event included not just students and school administrators, but your family and

friends. Very recently, I participated in a very special event when I officiated at my cousin's wedding. She is six months younger than I and this was her second wedding. We grew up together and shared many wonderful times and have many warm memories of these times. At the ceremony, there was not a dry eye, my own included, because I recounted many fond tales of our youth, not the least was how we ended up breaking her brother's leg and how we protected each other from our parents when we first went out dating as teenagers. That ceremony underscored something very important for me. It reminded me that the essence of who I am, the Latina in me, is an ember that blazes forever and that that ember was lit by my family and our friends.

That ember reminds me of, los muchos platos de arroz y guandoles, y de piener that I have eaten at countless family functions, of pasteles at Christmas. It is also, if you have my

adventurous taste buds, morcilla, patitas de cerdo con garbanzos, y la lengua y orejas del cuchfrito. It is coquitos y piraguas during the summer. It is the sounds of merengue at all our family parties and the incredibly long and heartwrenching Spanish love songs that my family enjoys. It is the memory of seeing Cantiflas when I was a kid with my cousins at the Saturday afternoon movies.

My Latina ember was kindled each weekend that I visited and played in abuelita's house. My playmates were my cousins and the children of our extended family that included padrinos y padrinas, suegros y suegras, their families and the people who lived next door who came over to play dominoes o la loteria-(bingo) on Saturday nights. Does anyone one of these things make me a Latina. No. It is not speaking Spanish, which I do. Instead, it is being Latina in the way I love and live my life. It is the mix in me

that comes from a family whose very existence showed me how wonderful and vibrant life is and who through their love and support showed me that although I am an American, love my country and could achieve its opportunity of succeeding at anything I worked for, that I also have a Latina soul and heart with the magic that that carries.

I am very young but I recognize that our society has changed tremendously since I was a child. I suspect that many of the students here don't even remember Cantiflas. Cheaper airplane travel, greater public transportation and more cars alone have dispersed families across greater distances. Growing up, all of my family, except those that remained in Puerto Rico, essentially lived in the Bronx within miles of each other. It pleases me enormously that the students here who may not have had the same opportunities as I to grow up fully immersed in family and our

culture, that you have held on to your Hispanic identities but more importantly, that you understand your obligations and responsibilities as Latinos and Latinas.

We are a group in this society that faces enormous challenges. The following are statistics taken from the 1989-90 Census as reported and analyzed by the National Council of La Raza. Latinos represent the fastest growing segment of the U.S. population. Since 1980, the Latino population has grown about five times as fast as the non-Latino population and Latinos are expected to be the largest ethnic minority in the U.S. in the 21st century. We number about 20.1 million out of 243.7 million Americans, excluding the 3.5 million people of Puerto Rico. [I exclude them because the census count excludes them only.] We are also a young population, with a median age below Blacks and other groups, and we also tend to have slightly larger families than other groups. The

Hispanic school-age population is, as a consequence of our demographics, also rapidly growing and although today we account for 10% of public school enrollment, by the year 2000, we should constitute 1/6 of the students in the nations classrooms but one-third of the student population overall.

We remain, unfortunately, the most undereducated segment of the U.S. Population and by every statistical measurement, the gap between Hispanic and non-Hispanic communities continues to grow at alarming rates. Latinos have the highest school dropout rates of any major group. About 43% of Hispanics ages 19 years and over are not enrolled in high school and have no high school diploma. By age 16-17, almost one in five Hispanics has left school without a diploma, compared to less than one in 16 of Blacks and one in 15 of Whites. Only 10% of Hispanics over 25 years old and over have completed four or more years of college, compared to 11.3% of

Blacks and 20.9% of Whites in the same age group. La Raza notes further that for those students in school, Hispanics share less in gifted and special talent programs and have a higher percentage of students left back or not at age and grade normed achievement levels.

Employment follows education and we should not be surprised that in income statistics, Latinos are also not faring well. Latinos have a much higher unemployment rate than non-Hispanics, 50% over the rate for Non-Hispanics, and 60% above the rates of Whites. We are less likely than non-Hispanics to have managerial and professional jobs. In a comparison none of us likes winning, only Blacks and American Indians do more poorly in gross employment numbers but Blacks do better in education measures than we do. Latinos have lower per capita incomes than either Whites or Blacks. In 1988, Hispanics had a per capita income of about $7900,

Blacks at about $8200 and Whites at about $13,900. I note that among hispanics, La Raza reports Puerto Rican families as faring worst economically with the lowest family medians and the highest proportion of families with incomes below $10,000. I further note that our poverty rates are highest among female-headed Hispanic families.

As the National Council of La Raza has concluded, in this fast rapidly evolving technological society, unless we educate our children better and improve their opportunities, our poverty gap with the rest of society will only widen.

These statistics are terribly sobering. We have much to do. Nevertheless, an event like today should give us hope. Here are students who have not dropped out. Here are students who are achieving and have real hope of improving their economic status. Here, most importantly, are students who understand fully the

importance of hard work in achieving success but who also understand that they have a responsibility to help change these frightening numbers.

It is important as young people to dream and to be successful. Some of you may go off to work in fairly traditional legal areas. Others of you may stay in public service careers. There is nothing wrong with either choice. Both choices enrich our community. The significant fact is remembering that whatever we do, we should not forget that we are Latinos, of rich and important cultures, and that we have a responsibility to devote time, when we can, to pro bono work, and to give support with money, when we have that, to help our community face its enormous challenges. I as many of you know that training for work is very time consuming. You don't always have time to give to other activities. That's alright. You need to develop your skills. The important thing, however, is not

to get lost in your work forever but to make sure you take and make time to reach out and volunteer time to our community throughout your life.

I tell immigrants who I am swearing in as new citizens that I wish I could describe the United States of America to them as paradise. Everyone knows that the U.S. is not perfect. Even here, not all dreams come true and not all hopes can be realized. If nothing else, economic realities limit many dreams. Yet, the need to dream, the need to hope, the need to believe and know that we live in a land that gives us the chance to have dreams come true, that is the gift of America.

With freedom and liberty and opportunity comes, however responsibility. As citizens and member of this society, we all share the responsibility of working together within our democratic system of government -- to strengthen it -- to ensure that the

promise of America and its freedoms comes to all people in our society.

In America, all people, no matter how rich or poor they start out or end up, no matter what their ethnic or racial or religious background may be, have shared and continue to share in creating this country. We must ensure that Latinos as a group share fully in the American dream. What your parents have done here is wonderful and provides the best that our society has to offer. They have taught you about this country, they have made you Americans but they have not let you forget about your backgrounds and your cultures. I am very honored to have been hear tonight. To congratulate your families for the wonderful way you students of Hofstra have grown up, for the fine men and women you have become and for the generosity of spirit you have shown in your good works here, especially with projects like the workplace program. Your

families here have much to be proud of as do you students. It is wonderful to be able to say yo tengo orgullo en ser Latina o Latinio y tambien entiendo me responsabilidad a mi communidad. We need for you to continue taking pride in who you are, where you came from and to remember that you must always take time to give back to others in our community some of the benefits of what you have received. Good night and thank you again for letting me share this evening with you.

El Orgullo y Responsabilidad de Ser Latino y Latina.

Keynote Speech given on May 17, 1996, at the Hispanic National Bar Association's National Board of Governor's Reception. Association of the Bar of the City of New York.

Thank you Barbara and Jose for the gracious introduction. In structuring a speech for tonight, I realized that anything I spoke about would be well known to the many members of the people of color bar who are present here today. I knew, however, that we would have many guests here who would not fully understand how people of color came to identify as such and who may not fully know of the needs of our communities. With that in mind, I decided to adapt for tonight a concept I addressed at a recent Dinner Dance held by the Latino and Latina American Law Students Association of Hofstra University School of Law. That concept is an attempt to define what made me a Latina and from where I got my sense of pride in being Hispanic and why I must work in helping my community reach its potential in this society. I draw upon my personal experience

as a Latina but I suspect my experience is not dissimilar from that of the many people of color in this room. As with most people, the essence of my identity was born with and nutured by my family and the memories they created.

For me, los muchos platos de arroz y guandoles (rice and beans), y de piener (roasted pig) that I have eaten at countless family functions, and pasteles (boiled root crop paste) at Christmas, are part of my Hispanic being. It is also, if you have my adventurous taste buds, morcilla (pig intestines), patitas de cerdo con garbanzos (pig feet and beans), y la lengua y orejas del cuchfrito (pig tongue and ears). It is coquitos (coconut ices) y piraguas (shaved ice with tropical colored juices added on) during the summer. It is the sounds of merengue at all our family parties and the incredibly long and heartwrenching Spanish love songs that my family enjoys listening to. It is the memory of seeing

Cantiflas, one of the most famous Spanish comics, when I was a kid with my cousins at the Saturday afternoon movies.

My Latina soul was nourished each weekend that I visited and played in abuelita's house. My playmates were my cousins and the children of our extended family that included padrinos y padrinas (godfathers and mothers), suegros y suegras (in-laws), their families and the people who lived next door who came over to play dominoes o la loteria on Saturday nights. Did anyone one of these things make me a Latina. No, obviously not, because each of our Carribbean and Latin American communities has their own unique foods, variations thereof and somewhat different traditions at the holidays. I have grown to love tacos only in my adulthood. I was introduced to the beautiful song "La Paloma", in college by my Mexican roommate. It has now become more popular on the East coast but it was not known here while I was growing up. Being Latina is

also not speaking Spanish, which I do. Many of us educated here barely speak Spanish and all too many of us who do speak it, speak it poorly.

A historian or social scientist could likely provide a very academic desciption of being Latino. For example, we could describe Latinos as those people and cultures populated or colonized by Spain who maintained or adopted Spanish or Spanish creole as their language of communication. That anesceptic description, however, does not provide an adequate explanation for why individuals like us, many of us born in a completely different cultures, still identify so strongly with the communities in which our parents were born.

America, unlikely many other nations, has created a societal image that is in a constant state of tension in dealing with its ethnic identities. We as a society tout the cultural and

racial diversity of our people yet insist that we can function and live in a race and color blind way. That tension today is being hotly debated in national discussions about affirmative action-discussions in which groups like your own will have to take a leadership role. The tension obviously leads many of us to protect our cultures and to promote their importance. Yet, that need did not create me as a Latina. I became a Latina, instead, by the way I love and live my life. It is the mix in me that comes from a family whose very existence showed me how wonderful and vibrant life is and who through their love and support showed me that although I am an American, love my country and could achieve its opportunity of succeeding at anything I worked for, that I also have a Latina soul and heart with the magic that that carries.

Our society has changed tremendously since I was a child. I suspect that many of the younger Latino professionals here don't

even remember Cantiflas. Cheaper airplane travel, greater public transportation and more cars alone have dispersed people of color across greater distances. Growing up, all of my family, except those that remained in Puerto Rico, essentially lived in the Bronx within miles of each other. Thus, it will harder for our children to hold on to their ethnic identities. But hold on we must because Latinos and all minority groups, regardless of what part of the country we live in, face as a group in this society, enormous challenges.

The following are statistics that many of you are familar with but they are always worth repeating. The numbers are taken from the 1989-90 Census as reported and analyzed by the National Council of La Raza.

Latinos represents the fastest growing segment of the U.S. population. Since 1980, the Latino population has grown about

five times as fast as the non-Latino population and Latinos are expected to be the largest ethnic minority in the U.S. in the 21st century. We number about 20.1 million out of 243.7 million Americans, excluding the 3.5 million people of Puerto Rico. We are also a young population, with a median age below Blacks and other groups. We also tend to have slightly larger families than other groups. The Hispanic school-age population is, as a consequence of our demographics, also rapidly growing and although today we account for only 10% of public school enrollment, by the year 2000, we should constitute 1/6 of the students in the nations classrooms but one-third of the student population overall.

We remain, unfortunately, the most undereducated segment of the U.S. Population and by every statistical measurement, the gap between Hispanic and non-Hispanic communities continues to grow at alarming rates. Latinos have the highest school dropout rates

of any major group. About 43% of Hispanics ages 19 years and over are not enrolled in high school and have no high school diploma. By age 16-17, almost one in five Hispanic has left school without a diploma, compared to less than one in 16 of Blacks and one in 15 of Whites. Only 10% of Hispanics over 25 years old have completed four or more years of college, compared to 11.3% of Blacks and 20.9% of Whites in the same age group. La Raza notes further that for those students in school, Hispanics share less in gifted and special talent programs and have a higher percentage of students left back or not at age and grade normed achievement levels.

Employment follows education and we should not be surprised that in income statistics, Latinos are also not faring well. Latinos have a much higher unemployment rate than non-Hispanics, 50% over the rate for Non-Hispanics, and 60% above the rates of Whites. We are less likely than non-Hispanics to have

managerial and professional jobs. In a comparison none of us likes winning, only Blacks and American Indians do more poorly in gross employment numbers but Blacks do better in education measures than we do. Latinos have lower per capita incomes than either Whites or Blacks. In 1988, Hispanics had a per capita income of about $7900, Blacks at about $8200 and Whites at about $13,900. I note that among hispanics, La Raza reports Puerto Rican families as faring worst economically with the lowest family medians and the highest proportion of families with incomes below $10,000. I further note that our poverty rates are highest among female-headed Hispanic families.

I doubt this group of lawyers needs to be reminded that although Latinos are about 10% of the general population, we are only 5.6% of the nation's law school population, and only 2.6% of the associates of the 25 largest New York law firms are Hispanic.

We have fewer than 100 Hispanic law professors out of 5700 positions nationwide.

As the National Council of La Raza has concluded, in this fast rapidly evolving technological society, unless we educate our children better and improve their opportunities, our poverty gap with the rest of society will only widen.

These statistics are terribly sobering. We have much to do. That is why events like today are so important. Members of HBNA and members of the bench and bar of people of color in the tri-state area are among the educational elite of our communities. We have a responsibility not only to achieve success individually so that we provide role models and opportunities for others but we have a responsibility to help change these frightening numbers.

It is critical for us in our otherwise busy lives to remember that whatever we do, we should not forget that we are people of

color, of rich cultures, and that we have a responsibility to devote time, when we can, to pro bono work, and to give support with money, when we have that, to help our communities face their enormous challenges. I as many of you know that training for work is very time consuming. You don't always have time to give to other activities. That's alright. We all need to develop our skills and business. The important thing, however, is not to get lost in our work forever but to make sure we take and make time to reach out and volunteer time to our communities throughout our lives.

We must ensure that people of color share fully in the American dream. I am proud to be a member of HBNA who is committed to the goal of addressing issues important to the Latino community. We must keep in sight, however, the overriding reality that whatever our regional differences, the results of our problems are

affecting all of us. We need to take advantage of our common bonds and work together to our political, social and economic advantage.

It is wonderfully to be able to say Yo tengo orgullo en ser Latina pero tambien entiendo me responsabilidad a mi communidad. We as a national community need for you to continue taking pride in who you are, where you came from but also to remember that you must always take time to give back to others in your communities some of the benefits of what you have received. I wish HBNA's National Board much success this weekend in formulating HBNA's future agenda and in preparing for the next annual convention. I hope the joint committees of the various bars that are here the same success. Good night and thank you again for letting me share this evening with you.

The Genesis and Needs of an Ethnic Identity

Keynote Speech given on November 7, 1996, at the Third World Center, Princeton University, Latino Heritage Month Celebration.

Thank you for the gracious introduction. I am delighted to be here tonight, celebrating Latino heritage month, the Third World center's 25th anniversary and Princeton's 250th anniversary. I am also celebrating my 20th year since graduating from Princeton and it is wonderful to have the opportunity to speak on campus and in a building that contain so many memories for me. Since my graduation, I have had many exciting and challenging experiences, not the least of which has been my appointment to the federal bench. My experiences have taught me much and enriched my life immeasurably. My days at Princeton, however, were the single most transforming experience I have had. It was here that I became truly aware of my Latina identity -- something I had taken for granted during my childhood when I was surrounded by my family and their friends. At Princeton, I began a lifelong commitment to identifying myself as a Latina, taking pride in being Hispanic, and in recognizing my obligation to help my community reach its fullest potential in this society.

In speaking to you tonight, I draw upon my personal experience as a Latina and my knowledge of the special needs of my community. I know, however, that my experience and my community's needs are not unlike those of the many people of color in this room.

As with many people, my identity as a Latina was forged, and closely nurtured by my family through our shared traditions. For me, a special part of my being Hispanic are the muchos platos de arroz y guandoles (rice and beans), y de piener (roasted pig) that I have eaten at countless family functions, and the pasteles (boiled root crop paste) I have consumed year after year during the Christmas holidays. My Hispanic identity also includes, because of my adventurous taste

buds, morcilla (pig intestines), patitas de cerdo con garbanzos (pig feet and beans), y la lengua y orejas del cuchfrito (pig tongue and ears). It means eating coquitos (coconut ices) y piraguas (shaved ice with tropical colored juices added on) during the summer. It is the sound of merengue at all our family parties and the heart wrenching Spanish love songs that we enjoy. It is the memory of seeing Cantiflas, our famous comic, when I was a kid with my cousins at the Saturday afternoon movies.

My Latina soul was nourished each weekend that I visited and played in abuelita's (grandma's) house. My playmates were my cousins and the children of our extended family that included padrinos y padrinas (godfathers and mothers), suegros y suegras (in-laws), their families and the people who lived next door who came over to play dominoes o la loteria - our bingo - using chick peas as markers on Saturday nights.

Does any one of these things make me a Latina? No, obviously not, because each of our Caribbean and Latin American communities has their own unique foods and different traditions at the holidays. My family in Puerto Rico celebrates Three Kings Day, which my family in New York has not done. I learned about tacos only here at Princeton because of my Mexican first-year college roommate, Dolores Chavez, whom you honored last year. She also introduced me to the beautiful song "La Paloma" that is now popular on the East coast as well. Being Latina in America also does not mean speaking Spanish. I happen to speak Spanish fairly well, but my brother, only three years younger, like too many of us educated here, barely speaks Spanish. And even those of us who do speak Spanish, speak it poorly.

If I had pursued my career in my undergraduate history mayor, I could likely provide you with a very academic description of what being Latino means. For example, I could define Latinos as those people and cultures populated or colonized by Spain who maintained or adopted

Spanish or Spanish Creole as their language of communication. That antiseptic description, however, does not really explain the appeal of morcilla or merengue to an American born child. It does not provide an adequate explanation for why individuals like us, many of us whom were born in this completely different American culture, still identify so strongly with the communities in which our parents were born and raised.

America has a deeply confused image of itself that is a perpetual source of tension. We are a nation that takes pride in our ethnic diversity, recognizing its importance in shaping our society and in adding richness to its existence. Yet, we simultaneously insist that we can and must function and live in a race- and color- blind way that ignores those very differences that in other contexts we laud. That tension between the melting pot and the salad bowl, to borrow recently popular metaphors in New York, is being hotly debated today in national discussions about affirmative action. This tension leads many of us to struggle with maintaining and promoting our cultural and ethnic identities in a society which is often ambivalent about how to deal with its differences.

In this time of great debate, we must remember that it is not politics or its struggles that creates a Latino or Latina identity. I became a Latina by the way I love and the way I live my life. My family showed me by their example how wonderful and vibrant life is and how wonderful and magical it is to have a Latina soul. They taught me to love America, to value its lesson that great things could be achieved if one works hard for it. Princeton, in turn, showed me that in this society, in order to achieve its promise, it is critical to accept the fact that we people of color are different from the larger society, that we must work harder to overcome the problems our communities face, and that we must work together as people of color to achieve changes.

I underscore that in saying this I am not promoting ethnic segregation. I am promoting just the opposite: an ethnic identity and pride which impels us to work with others in the larger society to achieve advancement for the people of our cultures. You here, like me, who chose to be educated in a renown institution like Princeton, have already accepted the principal that we must work together within our society to integrate its established hierarchies and structures if we are to improve our own lives and that of our communities. Nevertheless, although we should not attempt to isolate ourselves from the larger society, we also must steadfastly refuse to lose our unique identities and perspectives in this process.

As I have described for you, I grew up in a very close knit family. My childhood friends were my cousins. The neighborhoods of my childhood were populated largely by Hispanics. Although I had some experiences with discrimination in high school, it was limited, and I was protected by my family and friends in the close cocoon we had around us. When I came to Princeton, however, that cocoon was gone. Princeton was very different from anything I had ever known. How very different I was from many of my classmates, came starkly alive here.

I grew up in the inner City. The first week at Princeton I stayed mostly in my room. Dolores, my roommate at the time, usually stayed late at the library, and I would fall asleep before she got home. That entire first week, I heard a cricket sound in my room. I became obsessed with that sound. Every night, I tore that room apart looking for the cricket. I didn't even know what one looked like except that I had seen Jimmy the Cricket in Pinnochio and figured it had to have long legs. That weekend my then boyfriend and later to be husband, who had grown up in the more country-like Westchester, came for a visit. I told him about the cricket in the room and he roared with laughter. He explained to me that the cricket was outside the room, on the tree whose leaves

brushed up against my dorm room window. This was all new to me: we didn't have trees brushing up against windows in the South Bronx or in the projects in which I was raised.

We also didn't know about prep schools then, or take skying trips, tennis lessons or European vacations in the South Bronx. Except visits to my family in Puerto Rico, I had barely traveled outside the Bronx. I only visited Westchester, which is the first county just north of the Bronx, when I met my intended husband. How different I felt from many of my classmates for whom many of these experiences were very common. The chasm I felt between us seemed and felt enormous.

My very first day signing up for classes I sat outside the gym next to a woman from Alabama. I remember being intrigued by her very unusual and lovely accent. I began to perceive the depth of our differences when she began to describe her many family members and friends who had attended Princeton. As we sat there, Dolores, my roommate, and Theresa, a friend from Puerto Rico, approached, laughing, and as is sometimes our wont, talking very loudly. At that moment, my Alabamian classmate turned to me and told me, as she looked at the approaching Theresa and Dolores, how wonderful Princeton was that it had all these strange people. How ironic, here I thought she was the strange one.

I spent my summers at Princeton doing things most of my other classmates took for granted. I spent one summer vacation reading children's classics that I had missed in my prior education -- books like Alice in Wonderland, Huckleberry Finn, and Pride and Prejudice. My parents spoke Spanish, they didn't know about these books. I spent two other summers teaching myself anew how to write. I had had enough natural intelligence to get me through my early education but at Princeton I found out that my earlier education was not on par with that of many

of my classmates. When my first mid-term paper came back to me my first semester, I found out that my Latina background had created difficulties in my writing that I needed to overcome. For example, in Spanish, we do not have adjectives. A noun is described with a preposition, a cotton shirt in Spanish is a shirt of cotton, una camisa de agodon, no agondon camisa. Because of this, as with my Latino students, my writing was stilted and overly complicated, my grammar and vocabulary skills weak. I wrote in my first history paper -- authority of dictatorship, instead of dictatorial authority. I spent a lot of time here filling the gaps of my earlier education.

At that time in my life, as I was meeting all these new and very different people, reading classics and relearning writing skills, Princeton was an alien land for me. I felt isolated from all I had ever known, and very unsure about how I would survive here. Accion Puertorriquena, the Puerto Rican group on campus then, and the Third World Center, the building we stand in tonight, provided me with the anchor I needed to ground myself in this new and different world. I met our alumni and upperclass members, like Manny Del Valle and Margarita Rosa who had demonstrated and taken over university buildings in order to push the University to give us the Third World Center. This very annex, Liberation Hall, was built while I was here from funds they had struggled to get from the University. It was a Chinese friend from high school who was here and the Puerto Rican students who volunteered at the admissions office who recruited me to Princeton. At that time, we had no Puerto Rican or Mexican-American professors or administrators. Frank Reed of the Chicano Organization of Princeton, and Charles Hey, another Puerto Rican student, and I, as Co-Chairpersons of Accion Puertorriquena, filed a complaint with the EEOC about Princeton's affirmative action failures. A short time later, Princeton hired its first Hispanic assistant dean of students.

Because of my work with Accion Puertorriquena, the Third World Center, and other activities in which I participated like the University's Discipline Committee, I was awarded the Pyne Prize in my senior year. The kid who didn't know how to write her first semester, was honored for academic excellence and commitment to University service in her senior year. When accepting the Prize, I said then, and I repeat today that it was not I who earned or deserved that prize that day; it was the third world students who preceded me and those with whom I had worked that had created a place for me at Princeton.

In my years here, Princeton taught me that we people of color could not only survive here, but that we could flourish and succeed. More important, I learned that despite our differences from others at Princeton, we, as people of color with varying ethnic experiences, had become a permanent part of Princeton. It gave much to us, but we gave back to it as well. We brought the Puerto Rican Traveling Theater to Princeton and let our classmates experience its richness. We introduced courses on Puerto Rican and Mexican-American history to the Latin American Department. Princeton changed us, not just academically, but also in what we learned about life and the world. At the same time, we changed this place by our presence here. This third world center is just one concrete example among many of how a group of committed students can change a piece of our society in powerful, and permanent ways.

Your differences from the larger society and the problems you face don't disappear when you leave Princeton. I can assure you, however, that your experiences here will permit you more ably to deal with those differences in the future. The shock and sense of being an alien will never again, I suspect, be as profound for you as it has been here. But I know from personal experience that having been educated at Princeton both academically and socially, you are better

equipped to address the very significant problems you and our communities face.

Our society has changed tremendously since I was a child. I suspect that many of you here don't even remember or know about the comedian Cantiflas. Cheaper airplane travel, greater public transportation and more cars, along with other demographic factors, have dispersed people of color across greater distances. Growing up, all of my family, except those that remained in Puerto Rico, lived in the Bronx within miles of each other. From these technological advances, our children will have more opportunities to enjoy, but it will be harder for them to hold on to their ethnic identities. But hold on to them we must because Latinos and all minority groups, despite what part of the country we live in, face enormous challenges in this society.

The following are statistics that many of you are familiar with but which are always worth repeating and remembering. The numbers are taken from the 1989-90 Census as reported and analyzed by the National Council of La Raza.

Latinos represents the fastest growing segment of the U.S. population. Since 1980, the Latino population has grown about five times as fast as the non-Latino population and Latinos are expected to be the largest ethnic minority in the U.S. in the 21st century. We number about 20.1 million out of 243.7 million Americans, excluding the 3.5 million people of Puerto Rico. We are also a young population, with a median age below African-Americans and other groups. We also have slightly larger families than other ethnic groups. The Hispanic school-age population is, because of our demographics, also rapidly growing and although today we account for only 10% of public school enrollment, by the year 2000, we will constitute 1/6 of the students in the nations classrooms, but one-third of the student population overall.

We remain, unfortunately, the most undereducated segment of the U.S. Population

and by every statistical measurement, the gap between Hispanic and non-Hispanic communities continues to grow at alarming rates. Latinos have the highest school dropout rates of any major ethnic group. About 43% of Hispanics ages 19 years and over are not enrolled in high school and have no high school diploma. By age 16-17, almost one in five Hispanics has left school without a diploma, compared to less than one in 16 of African-Americans and one in 15 of Whites. Only 10% of Hispanics over 25 years of age have completed four or more years of college, compared to 11.3% of African-Americans and 20.9% of Whites in the same age group. La Raza notes further that for those students in school, Hispanics share less in gifted and special talent programs and have a higher percentage of students left back or not at age and grade normed achievement levels.

Because employment follows from education, we should not be surprised that in income statistics, Latinos are also not faring well. Latinos have a much higher unemployment rate than non-Hispanics, 50% over the rate for Non-Hispanics, and 60% above the rates of Whites. We are less likely than non-Hispanics to have managerial and professional jobs. In a comparison none of us likes winning, only African Americans and American Indians do more poorly in gross employment numbers. Latinos, however, have lower per capita incomes than either Whites or African Americans. In 1988, Hispanics had a per capita income of about $7900, African Americans at about $8200 and Whites at about $13,900. The New York Times reported in an article published on October 13, 1996, that last year, earnings for all Hispanic groups dropped while income for blacks and whites rose. I note that among Hispanics, La Raza reports Puerto Rican families as faring worst economically, with the lowest family medians and the highest proportion of families with incomes below $10,000. Our poverty rates are highest among female-headed Hispanic families.

As the National Council of La Raza has concluded, in this rapidly evolving

technological society, unless we educate our children better and improve their opportunities, our poverty gap with the rest of society will only widen.

These statistics are terribly sobering. We have much to do. That is why third world centers at institutions like Princeton are so important. Princeton graduates, of any ethnic group, are among the educational elite of our communities. We have a responsibility not only to achieve success individually so that we provide role models and opportunities for others but we have a responsibility to help change these foreboding numbers. During my Pyne Prize acceptance speech, I quoted Albert Einstein's ageless words:

> Man is here for the sake of other men. ...
> Many times a day I realize how much my own
> outer and inner life is built upon the labors
> of my fellow men, both living and dead, and
> how earnestly I must exert myself in order to
> give in return as much as I have received.

It is critical for us in our otherwise busy lives, never to forget that we are people of color, of rich cultures, and that we have a responsibility to devote time, when we can, to pro bono work on behalf of our communities, and to give support with money, when we have it, to help our communities face their enormous challenges. I, as many of you, know that studying and training for work is very time consuming. You don't always have time to give to other activities. That is alright. We need to develop our skills. The important thing, however, is not to get lost in studies and personal ambitions but to make sure to take and make time to reach out and volunteer in our communities throughout our lives. Our ethnic identities give us strength. Take pride in them, take sustenance from them, but give back to our communities as well.

We must ensure that all people of color - not just those of us fortunate enough to be educated at institutions like Princeton - share fully in the American dream. We must keep in sight the overriding reality that whatever our regional, cultural or ethnic differences as people of color, the problems of any of us are the problems of all of us. We need to take advantage of our common bonds and work together to our political, social and economic advantage.

It is wonderful to be able to say Yo tengo orgullo en ser Latina pero tambien entiendo me responsabilidad a mi communidad. Translated: I take pride in being a Latina and I also understand my responsibility to my community. We are fortunate to be a part of a great institution like Princeton. It has a glorious history, and we should take pride in being a part of it. It and its fine reputation will hold you in good stead throughout your lives. My lifetime accomplishments, as yours will be, are in no small measure attributable to my Princeton experience. Nevertheless, for the many reasons I have discussed, we need for you to continue taking pride in whom you are, where you came from, and always to remember that you must take time to give back to others in your communities some of the benefits that you have received. Good night and thank you again for letting me share this evening with you and giving me this opportunity to reminisce. I look forward to meeting as many of you as I can tonight but I expect that as your careers develop, our paths will cross again.

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Highlight

WOMEN LITIGATORS DISCUSS BATTLING BIAS IN COURTOOM

By Edward A. Adams

ON WEDNESDAY, during a trial before Manhattan federal District Court Judge Sonia **Sotomayor,** one witness referred to another witness - a woman in her 30s - as "little girl."

Judge **Sotomayor,** who describes herself as someone who likes to take charge of the courtroom, considered telling the witness to use a more appropriate description, but she decided it was a matter for the lawyers to handle.

During cross-examination, counsel used that description, said by a witness brought on by opposing counsel, to benefit his client. "If I went with my instincts, I would have deprived [the client] of that opportunity," the judge told the audience at a two-day program on "The Woman Advocate" which began yesterday at the Grand Hyatt.

The conference, sponsored by the American Bar Association Section on Litigation and Prentice Hall Law & Business, highlighted the difficult decisions that female litigators and judges make each day in courtrooms around the city.

The audience of approximately 600 women and a handful of men were told that while women have made great strides in the legal profession in recent decades, women constitute only 16 percent of the profession. In the courtroom - where stereotypically male characteristics of dominance and aggression remain prized - being an effective representative of the client without being viewed as too aggressive is a difficult balance, said panelists.

Janet S. Kole, a partner in Philadelphia's Cohen, Shapiro, Polisher, Shiekman & Cohen, said that during a pretrial conference, a judge in a Philadelphia County Court greeted her by kissing her hand and saying "So how are you, little lady?"

"It was clear to me it was a put-down in front of my opposing counsel," said Ms. Kole. Instead of commenting to the judge at that moment, she put her strongest witness on first to "show I'm not a wimp."

Correcting lawyers or judges on their use of characterizations like "little lady" or "Miss" - a subtle but common form of gender bias - varies depending on the circumstances, said panelists.

Certainly, if the case itself involves gender issues or the references harm your client, the lawyer needs to speak out. If the problem persists, particularly if the offender is a judge, the lawyer needs to build a record for appeal. But panelists conceded that few decisions have been reversed because of a judge's gender bias.

If the bias is directed against the lawyer, consideration must be given to whether speaking out will harm the client, said several panelists.

Correcting a judge or opposing counsel in a "soft" way, with humor or flattery, is one approach, said panelists. "Even though I know a lot of the fauning is because of my position, you can't avoid liking your ego being stroked," said Judge **Sotomayor.**

The timing of a complaint also is important. Female attorneys should remember that after a decision has been reached in a case, there is nothing wrong in saying something to a judge who made biased comments, said Judge **Sotomayor.**

Other members of the panel were Janet Benshoof, president of the Center for Reproductive Law and Policy; Lawrence J. Fox, partner at Philadelphia's Drinker Biddle & Reath; Susan M. Karten, parter at Castro & Karten and Elizabeth M. Schneider, professor at Brooklyn Law School.

Survey Results

The sexes agree that a lawyer's gender makes a difference in the courtroom, but differ dramatically on what that difference is, according to a survey of 700 members of the ABA litigation section discussed yesterday.

Sixty percent of respondents said they believe male and female attorneys behave differently before a jury, while 57 percent said the sexes behave differently before a judge.

Almost half of female lawyers (47 percent) said women are less aggressive than their male counterparts in a jury trial, while only 22 percent of male lawyers agreed with that statement.

On the other hand, 16 percent of the males said women attorneys are harsher than males in a jury trial, while only 3 percent of women agreed.

And 19 percent of men said women use their femininity with the jury, while only 3 percent of women agreed. About 22 percent of women attorneys said male lawyers "buddy up" to a male judge, while only 1 percent of male lawyers pled guilty-as-charged.

4/2/93 NYLJ 1, (col. 1)

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